

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

QDOBA RESTAURANT CORPORATION,

CIVIL DIVISION

Plaintiff,

GD No. *GD-18-2845*

v.

**COMPLAINT**

BROOKS HOSPITALITY LLC, CHAD  
BROOKS, and SARAH BROOKS,

Code: 020

Defendants.

Filed on behalf of Plaintiff, Qdoba Restaurant  
Corporation.

Counsel of Record:

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QDOBA RESTAURANT CORPORATION, CIVIL DIVISION

Plaintiff, GD No.

v.

BROOKS HOSPITALITY LLC, CHAD  
BROOKS and SARAH BROOKS

Defendant.

**COMPLAINT**

AND NOW COMES Plaintiff, Qdoba Restaurant Corporation, by and through its counsel, Gordon & Rees LLP, files the following Complaint and in support thereof avers as follows:

1. Plaintiff, Qdoba Restaurant Corporation (“Qdoba” or “Plaintiff”), has brought this action seeking a temporary restraining order and preliminary injunction against Defendants Brooks Hospitality, LLC, Chad Brooks, and Sarah Brooks (“Defendants”) requiring them to immediately close their Qdoba restaurant located at 3712 Forbes Avenue, Pittsburgh, Pennsylvania (“Restaurant”) and preventing them from operating their Restaurant due to numerous health and sanitation issues.

2. Plaintiff, Qdoba, is a Delaware corporation with its principal place of business at 9330 Balboa Avenue, San Diego, California 92123.

3. Defendant, Brooks Hospitality, LLC, (“Brooks Hospitality”) is a Pennsylvania limited liability company with its principal place of business at 408 Mill Street, Coraopolis, Pennsylvania 15108.

4. Upon information and belief, Defendant, Chad Brooks, is a Pennsylvania resident with an address of 824 Beaver Street, Sewickley, Pennsylvania 15143.

5. Defendant, Sarah Brooks, is a Pennsylvania resident with an address of 341 Henry Avenue, Sewickley, Pennsylvania 15134.

6. Defendants Chad Brooks and Sarah Brooks (collectively with Brooks Hospitality, "Defendants") guaranteed all of Brooks Hospitality's contractual obligations addressed herein and are the owners of Brooks Hospitality, as well as the moving, active, and conscious force behind its misconduct alleged herein, and as officers of this company, they authorized and approved Brooks Hospitality's misconduct.

### **FACTUAL BACKGROUND**

#### **A. The Qdoba Marks**

7. Qdoba owns the federally-registered Qdoba trademarks, service marks, logos and derivations thereof (the "Qdoba® Marks"), as well as the distinctive and well-known Qdoba® System, for fast casual Mexican cuisine, which is sold to the public under the Marks.

8. Qdoba has the exclusive right to license the use of the Qdoba® Marks, which are on the principal register of the United States Patent and Trademark Office and has continually used the Qdoba® Marks since the date of their registration. The Marks are in full force and effect pursuant to 15 U.C.S. § 1065 and Qdoba has given notice to the public of the registration of the Qdoba® Marks as provided in 15 U.S.C. § 1111.

9. Qdoba grants licenses to franchisees to use the Marks and participate in its confidential and proprietary business system pursuant to written franchise agreements, which are reasonably and carefully tailored to protect Qdoba's valuable trade secrets, reputation, goodwill, and other legitimate business interests.

10. Qdoba has invested substantial effort over a long period of time, including the expenditure of substantial sums of money, to develop goodwill in its trade names and service

marks and to cause consumers throughout the United States to recognize the Qdoba® Marks as distinctly designating Qdoba income tax preparation services as originating with Qdoba.

11. The value of the goodwill developed in the Qdoba® Marks is not capable of precise monetary calculation, but because Qdoba is widely known as a fast casual Mexican restaurant, the value of Qdoba's goodwill is substantial. That goodwill will be severely damaged if Defendants are permitted to continue to operate their restaurant in an unsafe and unhealthy manner.

**B. The Franchise Agreement**

12. Qdoba has developed a business plan and system of uniform standards, methods, procedures, specifications, merchandising and advertising (the "System") for the operation of fast-casual restaurants selling Mexican food. Qdoba provides its services to the public through authorized franchisees who enter into Franchise Agreements with Qdoba.

13. On or about October 18, 2012, Plaintiff entered into a Qdoba Mexican Grill Franchise Agreement (the "Franchise Agreement") with the Defendant, Brooks Hospitality. A true copy of the Franchise Agreement is attached hereto as **Exhibit 1**.

14. Pursuant to the terms of the Franchise Agreement, Defendants were authorized to operate a Qdoba restaurant at 3712 Forbes Avenue, Pittsburgh, PA 15213 (the "Restaurant") for a period of ten (10) years.

15. Pursuant to the Franchise Agreement, Qdoba provided Defendants with training in franchise operation, marketing, advertising, sales, and business systems.

16. Defendants were permitted to use Qdoba's trademarks in association with the operation of its Qdoba Restaurant as part of Qdoba's franchise system, provided that the Franchise Agreement was fully and timely performed by Defendants.

17. Pursuant to the Franchise Agreement, Defendants agreed to pay royalties in exchange for the use of the marks.

18. Among other obligations, Defendants agreed to abide by the terms of Section 16 of the Franchise Agreement, entitled "Compliance with Laws and Health Standards."

19. Pursuant to Paragraph 16.1 of the Franchise Agreement, Defendants agreed to "meet and maintain the highest health standards and ratings applicable to the operation of the Restaurant." Additionally, Defendants agreed to furnish to Plaintiff a copy of any inspection report, warning, citation or other documents applicable to the health or safety standards in the operation of the Restaurant within five (5) days.

20. Pursuant to Paragraph 16.2 of the Franchise Agreement, Brooks Hospitality agreed to "maintain the Restaurant in a high degree of sanitation, repair and condition."

21. Paragraph 16.3 of the Franchise Agreement requires Brooks Hospitality to, at all times, "conform with all federal, state and local laws, ordinances and regulations."

22. Additionally, pursuant to Paragraph 33.8.5 of the Franchise Agreement, any party is entitled to institute litigation at any time to, *inter alia*, protect the health or safety of the public.

**C. The Personal Guaranty**

23. In connection with the Franchise Agreement, on or about October 17, 2012, Defendants Chad Brooks and Sarah Brooks executed a Guaranty and Assumption of Franchise Owner's Obligations. A true copy of the Guaranty is incorporated into Exhibit 1.

24. Pursuant to the terms of the Guaranty, Defendants Chad Brooks and Sarah Brooks agreed to be personally bound by and personally liable for the breach of every provision of the Franchise Agreement, including both monetary obligations and other obligations.

**D. Health and Safety Issues with the Restaurant**

25. On November 15, 2017, Allegheny County Health Department conducted an inspection of the Restaurant. It issued a Food Safety Assessment Report with extremely troubling results, including a finding of violations in various categories such as pest management and cleaning and sanitation. The Report noted that "mouse droppings [were] observed." The Report also noted corrective action that needed to be taken and that a follow up inspection would be conducted on December 15, 2017.

26. On November 27, 2017, Court Pest Control treated the location for rodent issues.

27. On November 28, 2017, a guest visiting the Restaurant reported seeing a mouse run out from the kitchen and reported it to the Qdoba employees at the Restaurant.

28. On November 29, 2017, Defendants were contacted by Plaintiff to discuss the guest complaint about the mouse. Defendant Chad Brooks assured Plaintiff that he understood the seriousness of the situation and was "all over it" in terms of attempting to rectify this problem.

29. Throughout the month of January, Defendants reported to Qdoba that the rodent problem was being addressed and getting better.

30. On February 1, 2018, Plaintiff's Franchise Business Consultant, John Claflin visited the Restaurant. During this visit, Mr. Claflin noted a number of continuing and serious problems, including rodent droppings in the kitchen area and mice trapped on glue boards in the basement. These findings were noted in a Franchise Visit Report.

31. On February 6, 2018, Mr. Claflin again visited the Restaurant, this time with the Facilities Manager and Lauren Czerwinski from Varmint Guard to perform another inspection. Ms. Czerwinski found a significant rodent problem, including a dead mouse under the staircase,

another dead mouse in a crack in the dining room floor, as well as evidence of rodent droppings. She also noted that "mice are traveling from [the] back hallway along the wall to the serving counter." Finally, she concluded that "the Crack between the wall and lamenent[sic] flooring is a major contributor to the rodent issues along with sanitation. The sanitation of the restaurant needs to drastically improve."

32. On February 7, 2018, Plaintiff advised Defendants that they were not to open the Restaurant until the hazard posed to guests had to been completely eliminated.

33. On February 8, 2018, Defendants initially refused to close the Restaurant.

34. In response, in accordance with the terms of the Franchise Agreement, Qdoba deactivated the Point of Sale ("POS") system at the Restaurant and, again, directed Defendants to close the Restaurant.

35. At this time, Defendants finally agreed to close the Restaurant to allegedly attempt to rectify the public health and safety issues.

36. Qdoba immediately provided Defendants with a comprehensive Action Plan with 21 action items with deadlines for compliance in order to rectify the public health and safety issues at the Restaurant.

37. On February 10, 2018, after Defendants addressed some critical items, Qdoba permitted Defendants to open the Restaurant on this date.

38. By letter dated February 16, 2018, Qdoba advised Defendants that there were still critical issues impacting the public health and safety that had yet to be rectified. In the event all of these issues were not remedied, Qdoba reserved its right to terminate the Franchise Agreement in order to prevent the imminent threat to public health and safety presented by the continued operation of the Restaurant.

39. On February 23, 2018, Qdoba conducted a follow up visit to the Restaurant in order to determine whether Defendants fully complied with the items contained in the Action Plan and identified in the letter of February 16.

40. Unfortunately, several items were not addressed. During this visit, Qdoba witnessed rodent droppings in the men's restroom and there was also a PVC pipe in the mechanical room that needed to be sealed to prevent the continued infestation.

41. The shelving outside the walk-in refrigeration unit door and inside the unit were not clean. Defendants were required to repair or replace the doors and door frames as needed to prevent pest entry. In response, they merely filled a large gap in the door frame on the back wall with steel wool – improperly attempting to fix this issue.

42. Steel wool was also placed in a hole located near the floor in the storage closet door frame on the first floor which leads to the outside of the building. The steel wool is ineffective as there were mice droppings found in the storage closet and outside of the closet. Defendants were required to replace all steel wool with permanent wall repairs, but failed to do so.

43. During a prior visit, a dead mouse was found in the crack in the floor of the upstairs dining room and rodent droppings in the crack and around the steps. During Qdoba's inspection on February 23rd, Defendants still had not sealed the baseboards on the second floor of the restaurant to eliminate this issue or the entry point at the top of the stairs to prevent additional rodent activity in the area near the top of the stairs.

44. It was determined that the outstanding health and safety issues that Defendants failed to address constitute an imminent public health and safety concern. In short, Defendants breached the Franchise Agreement by failing to abide by Qdoba's health and safety standards



and they are creating and continue to create a hazard to the public at large.

45. As a result, by correspondence dated February 27, 2018, Qdoba provided Defendants with notice of default and termination of the Franchise Agreement. A true copy of the correspondence dated February 27, 2018 is attached hereto as **Exhibit 2**.

46. This letter explained that Defendants were given ample time to remedy the imminent health and safety hazards that were present in the Restaurant and Defendants failed to do so. As a result, Plaintiff is in the process of effectively terminating the Franchise Agreement pursuant to, among other things, Section 29.2.1 permitting termination if Plaintiff reasonably determines that a threat or danger to public health or safety is likely to result from the maintenance or operation of the Restaurant.

47. A temporary restraining order is necessary to stop the imminent potential health hazard created by the unsafe manner in which Defendants are operating the Restaurant.

**COUNT I**  
**Breach of Contract – All Defendants**

48. Plaintiff incorporates by reference Paragraphs 1 through 47 set out above as if fully set forth herein.

49. Pursuant to the Franchise Agreement, Plaintiff and Defendants had entered into a binding, legal and enforceable contract.

50. Defendants have breached the Franchise Agreement by, *inter alia*, (i) failing to maintain the highest health standards and ratings applicable to operation of the restaurant; (ii) repeated failures of evaluations of the Restaurant; (iii) failing to maintain the restaurant in a high degree of sanitation, repair and condition and (iv) failing to comply with all federal, state and local laws, ordinances and regulations.

51. As such, Defendants have breached the valid, legal binding contract between the parties and have created a health and safety hazard to the public.

52. As a result of Defendants' various breaches of the Franchise Agreement, Plaintiff is in the process of effectively terminating the Franchise Agreement; however, Plaintiff has suffered and will continue to suffer irreparable harm, including loss of the goodwill associated with the use of the Qdoba Marks by the continued operation of this unsanitary Restaurant.

53. Plaintiff has no adequate remedy at law to protect its substantial rights related to the operation of the unsanitary Restaurant, and the damage from Defendants' activities is considerable and continuing and thus not capable of monetary ascertainment at this time.

54. Plaintiff is entitled to a temporary restraining order and preliminary injunction requiring Defendants to immediately close the Restaurant.

55. Pursuant to the Franchise Agreement, Plaintiff is also entitled to the recovery of reasonable attorneys' fees and costs if it prevails in this action.

**COUNT II**  
**Breach of Contract – Chad Brooks and Sarah Brooks**

56. Plaintiff incorporates by reference Paragraphs 1 through 55 set out above as if fully set forth herein.

57. Pursuant to the terms of the Guaranty, Defendants Chad Brooks and Sarah Brooks agreed, among other things, that they would be personally liable for the breach of each and every provision in the Franchise Agreement, both monetary obligations and obligations to take or refrain from taking specific actions including complying with the provisions regarding sanitation, health and safety.

58. Pursuant to the terms of the Guaranty, Defendants Chad Brooks and Sarah Brooks are liable to Plaintiff for all damages caused as a result of these and any other breaches of the Franchise Agreement.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, Qdoba Restaurant Corporation, respectfully prays for judgment against Defendants as follows:

1. Judgment in Qdoba's favor on all claims herein;
2. For a temporary restraining order, preliminary injunction and a permanent injunction directing Defendants, their officers, directors, agents, servants, employees and attorneys and all others in active concert or participation with them to immediately close the Restaurant;
3. An award of interest, attorneys' fees and costs; and
4. Such other and further relief as the Court deems proper.

Dated: February 28, 2018

Respectfully submitted,

Gordon Rees Scully Mansukhani LLP

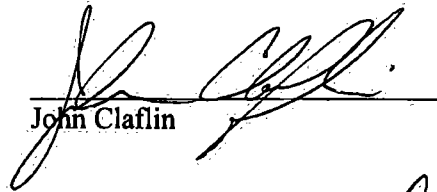
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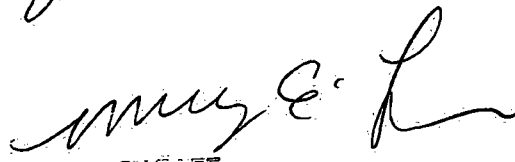
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*Attorneys for Qdoba Restaurant  
Corporation*

**VERIFICATION**

I, John Claflin, duly sworn according to law, depose and say that the facts contained in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4104 related to unsworn falsification to authorities.

  
John Claflin

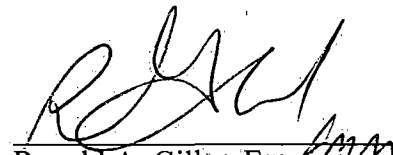
  
MARY E. LEE  
Notary Public - State of New York  
No. 01LE6044987  
Qualified in Suffolk County  
My Commission Expires July 17, 2018

February 28, 2018

**CERTIFICATE OF SERVICE**

I, Ronald A. Giller, hereby certify that a true and correct copy of the within **Complaint** was served upon the following counsel of record by electronic mail and U.S. First-Class Mail, postage prepaid, on the 28<sup>th</sup> day of February, 2018, as follows:

Robert O. Lampl, Esquire  
Ryan J. Cooney, Esquire  
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(Counsel for Defendants)

  
\_\_\_\_\_  
Ronald A. Giller, Esquire



**QDOBA MEXICAN GRILL® FRANCHISE AGREEMENT**

**Franchisee:** Brooks Hospitality, LLC

**Address:** 3712 Forbes Avenue, Pittsburg, PA 15213

**Site#:** #2108

**Renewal #:** 1

# QDOBA MEXICAN GRILL® FRANCHISE AGREEMENT

## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
<b><u>RECITALS</u></b> .....	1
1. GRANT OF LICENSE .....	2
2. TERM AND RENEWAL.....	3
3. FRANCHISE FEES AND ROYALTIES .....	5
4. SITE ACCEPTANCE.....	6
5. LEASE APPROVAL .....	7
6. CONSTRUCTION OF RESTAURANT .....	8
7. TIMING OF OPENING.....	10
8. TRAINING.....	10
9. OTHER ASSISTANCE TO FRANCHISEE.....	11
10. OPERATIONS AND MAINTENANCE OF RESTAURANTS.....	11
11. COMPUTER AND POINT OF SALES SYSTEMS .....	13
12. INGREDIENTS, MATERIALS, SUPPLIES AND SUPPLIERS.....	13
13. ADVERTISING.....	15
14. ACCOUNTING AND RECORDS SYSTEMS.....	18
15. PERSONNEL OF THE FRANCHISED RESTAURANT.....	20
16. COMPLIANCE WITH LAWS AND HEALTH STANDARDS.....	20
17. INSPECTIONS OF THE RESTAURANT.....	21
18. GUARANTEES .....	21
19. SECURITY INTEREST .....	22
20. OWNERSHIP AND USE OF MARKS .....	23
21. CASUALTY LOSSES .....	25

**QDOBA MEXICAN GRILL FRANCHISE AGREEMENT**

**TABLE OF CONTENTS - Continued**

<u>Section</u>	<u>Page</u>
22. INSURANCE.....	25
23. CONFIDENTIAL OPERATING MANUAL.....	26
24. CONFIDENTIAL INFORMATION.....	27
25. TRANSFER OF INTEREST.....	28
26. COMPANY'S RIGHT OF FIRST REFUSAL.....	31
27. DEATH OR DISABILITY OF FRANCHISEE.....	32
28. STATE AND FEDERAL SECURITIES LAW/PRIVATE OFFERINGS.....	32
29. DEFAULT AND TERMINATION.....	33
30. OBLIGATIONS UPON TERMINATION OR EXPIRATION.....	37
31. COVENANTS AND RESTRICTIONS ON OTHER BUSINESS INTERESTS.....	39
32. INDEPENDENT CONTRACTOR AND INDEMNIFICATION.....	41
33. MISCELLANEOUS PROVISIONS.....	42
34. ACKNOWLEDGMENTS.....	46

**EXHIBITS:**

- Exhibit A Accepted Location
- Exhibit B Proprietary Marks of the System
- Exhibit C Guaranty and Assumption of Franchise Owner's Obligations
- Exhibit D Authorization for Prearranged Payments
- Exhibit E Confidentiality and Non-Competition Agreement



**QDOBA MEXICAN GRILL®  
FRANCHISE AGREEMENT**

**THIS QDOBA MEXICAN GRILL® FRANCHISE AGREEMENT** ("Agreement") is made between **QDOBA® RESTAURANT CORPORATION**, a Delaware corporation, with its principal place of business at 4865 Ward Road, Suite 500, Wheat Ridge, Colorado 80033-1902 (hereinafter, "Company"), and **BROOKS HOSPITALITY, LLC**, a Pennsylvania limited liability company with its principal place of business at 408 Mill Street, Coraopolis, Pennsylvania 15108 (hereinafter, "Franchisee"). The Agreement is dated OCTOBER 17, 2012, and becomes effective on OCTOBER 18, 2012.

**RECITALS:**

**WHEREAS**, Company has expended significant time, effort and money to develop a distinctive system relating to the establishment and operation of Mexican-themed fast-casual restaurants featuring a specialized menu of oversized burritos, tacos, salads and fresh salsas prepared from scratch, as well as other food and beverage items (hereinafter referred to as "System"); and

**WHEREAS**, the distinguishing characteristics of the System include, without limitation, the use of distinctive exterior and interior design, decor, color scheme and furnishings; special recipes and menu items; uniform standards, specifications and procedures for operations; high quality and uniform products and services; procedures for inventory and management control; training and assistance; and marketing and promotional programs; all of which may be changed, improved and further developed by Company from time to time; and

**WHEREAS**, Company identifies the System by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including but not limited to, the marks "**Qdoba®**" and "**Qdoba Mexican Grill®**," and such other trade names, service marks, trademarks, logos and indicia of origin that may be designated by Company in the future for use in connection with the System (hereinafter referred to collectively as "Proprietary Marks" or "Marks"); and

**WHEREAS**, Company continues to develop, use and control the use of such Proprietary Marks in order to identify for the public the source of services and products marketed under the Marks and System, and to represent the System's high standards of quality, appearance and service; and

**WHEREAS**, Franchisee desires to enter into the business of operating a **Qdoba®** restaurant under Company's System, to obtain a franchise from Company for that purpose, and to receive the training and other assistance provided by Company in connection with the franchise; and

**WHEREAS**, Franchisee understands and acknowledges the importance of maintaining Company's high standards of quality, cleanliness, appearance and service

and the necessity of operating the business franchised under this Agreement in conformity with Company's standards and specifications and protecting any proprietary information provided to Franchisee under this Agreement; and

**WHEREAS**, Franchisee acknowledges that Franchisee has conducted an independent investigation of the business contemplated by this Agreement and understands and acknowledges that the nature of the business conducted by Company may evolve and change over time, that an investment in a Qdoba® restaurant involves business risks and that the success of the business is largely dependent upon the business abilities and efforts of Franchisee; and

**WHEREAS**, Franchisee acknowledges that Franchisee has not received or relied upon any representation, warranty, or guaranty, express or implied, as to the income, sales volume, earnings, expenses, revenues, profits or success of Qdoba® restaurants or the business contemplated by this Agreement; and Franchisee acknowledges that Franchisee has not received or relied upon any representations by Company, or its officers, directors, employees or agents, that are contrary to the statements made in Company's Franchise Disclosure Document or to the terms in this Agreement; and

**WHEREAS**, Franchisee further represents to Company, to induce it to enter into this Agreement, that Franchisee has made no misrepresentations to Company in Franchisee's application for the rights granted under this Agreement or Franchisee's Ownership Information Form.

**NOW, THEREFORE**, the parties, in consideration of the undertakings and commitments set forth in this Agreement, agree as follows:

## **1. GRANT OF LICENSE**

**1.1.** Company grants to Franchisee, upon the terms and conditions contained in this Agreement, the right to use and do business under the System and the Proprietary Marks of the System at the location described in Exhibit A to this Agreement (hereinafter referred to as the "Accepted Location"). The Proprietary Marks of the System are more fully described in Exhibit B to this Agreement, but may be modified by Company from time to time. The license permits Franchisee to operate a Qdoba® restaurant (hereinafter referred to as "Restaurant" or "Franchised Business") under the System and Proprietary Marks solely at the Accepted Location, and to use the Proprietary Marks and the System solely in connection with that Restaurant.

**1.2.** Except as otherwise provided in Subsection 1.3 below, during the term of this Agreement, Company will not operate, nor license anyone other than Franchisee to operate, any restaurant under the System within the lesser of a two- (2) mile radius of the Accepted Location or such smaller radius as is specified in Exhibit A ("the Protected Territory"). The grant of this franchise does not imply the grant of rights to any other location or territory.

**1.3.** Franchisee acknowledges that this license is non-exclusive, as described below:

**1.3.1.** At any time, Company may operate, or license others to operate, restaurants under the System outside of the Protected Territory.

**1.3.2.** At any time, Company may sell within the Protected Territory products and services that are authorized for sale at Qdoba® restaurants, as well as other products and services, under the Marks or other trademarks, service marks and commercial symbols, provided that such sales are through channels of distribution dissimilar to the primary channels of distribution of the Franchised Business. Dissimilar channels of distribution include, but are not limited to, grocery stores, the internet and catering services. Such sales do not constitute a violation of this Agreement.

**1.3.3.** Franchisee understands and acknowledges that certain locations within the Protected Territory may be more appropriately subject to development by Company, or by foodservice companies that specialize in institutional foodservice operations, have exclusivity rights to certain types of locations, or hold master lease rights to certain food court and other similar locations. These locations may include the campuses of universities or colleges, hospitals, public transportation facilities, amusement parks, government facilities, malls, stadiums or other sports facilities, and similarly situated sites. At any time, Company may operate, or franchise others to operate, Qdoba® restaurants at such sites whether or not the sites are located within the Protected Territory. The operation of such sites by Company and/or other franchisees does not constitute a conflict under, or violation of this Agreement.

**1.3.4.** After this Agreement expires or is terminated, Company may operate, or license others to operate, restaurants under the System within the Protected Territory.

**1.4.** Franchisee acknowledges and agrees that Company may modify, update and improve the System and the Marks, all in its sole discretion. Franchisee acknowledges and agrees that Company may enter into co-branding relationships, marketing agreements, and other strategic alliances with other companies or entities, all of which may result in changes to the System and Marks. As the System and Marks change, Franchisee may be required to purchase new equipment and/or signage, and make other investments in the Franchised Business. Franchisee understands and agrees that it must develop and operate the Restaurant in accordance with the System and Marks, as they are modified, updated, improved and changed from time to time.

**1.5.** Termination or expiration of this Agreement constitutes a termination or expiration of the franchise and any and all licenses granted under this Agreement.

## **2. TERM AND RENEWAL**

**2.1.** Except as otherwise provided herein, this Agreement expires at the earlier of ten (10) years from the effective date of this Agreement, or upon expiration or

termination of Franchisee's right to remain in possession of, or operate, a Qdoba® restaurant at the Accepted Location.

**2.2.** Company grants to Franchisee an option to enter into a new franchise agreement for the Accepted Location for one (1) additional consecutive term of ten (10) years or a shorter term that is coterminous with the lease for the Accepted Location, subject to the following conditions:

**2.2.1.** Not less than twelve (12) months or more than eighteen (18) months before the end of the initial term, Franchisee must have given Company written notice of Franchisee's election to exercise the option. If Franchisee does not provide timely written notice of its election to exercise the option, Franchisee will be deemed to have waived the option.

**2.2.2.** Franchisee must sign Company's then-current form of franchise agreement, which will supersede this Agreement in all respects. The terms of that franchise agreement may differ from the terms of this Agreement. The differences may include, without limitation, a higher percentage royalty fee, marketing contribution and/or advertising contribution.

**2.2.3.** Franchisee must pay, in lieu of an initial franchise fee, a renewal fee equal to the greater of five thousand dollars (\$5,000) or fifteen percent (15%) of Company's then-current franchise fee.

**2.2.4.** Franchisee must present evidence satisfactory to Company that Franchisee has the right to remain in possession of the Accepted Location for the entire additional term of the franchise.

**2.2.5.** Franchisee must complete such renovation, modernization and improvement of the Restaurant premises and fixtures, furniture and equipment as Company may reasonably require. Such work may include, without limitation, replacement or addition of signs, equipment, furnishings, fixtures, finishes and décor items, both interior and exterior, and redesign of the layout of the Restaurant, to reflect the then-current standards and image of the System. The maximum amount Franchisee will be required to spend on such work is one hundred fifty thousand dollars (\$150,000). The work must be substantially completed before the new franchise agreement is signed.

**2.2.6.** Franchisee must not be in default beyond the cure period under any provision of this Agreement, any amendment or successor to this Agreement, or any other agreement between Franchisee and Company.

**2.2.7.** Franchisee, the Principal Owners of Franchisee or of the franchise (as defined in Section 18), and Affiliates of Franchisee must have timely met all monetary obligations to Company and its Affiliates. The term "Affiliate" means any entity that owns, is owned by, or is under common ownership with, the entity being referenced.

**2.2.8.** Franchisee must not have received a notice of default more than three times during the initial term; however, regardless of the number of prior notices of default, Company will not be obligated to grant a new franchise if, in its opinion, Franchisee has not substantially complied with all of the terms and conditions of this Agreement or any other agreement between Franchisee and Company.

**2.2.9.** Franchisee must have complied with Company's then-current qualification and training requirements for new applicants.

**2.2.10.** At the time of renewal, Franchisee must sign a general release, in a form prescribed by Company, releasing any and all claims, including known and unknown claims, against Company and its Affiliates, and their respective officers, directors, agents and employees.

**2.3.** If Company chooses not to renew the franchise, Company will provide Franchisee written notice stating the reasons for such refusal, no later than ninety (90) days before the expiration of the term of the franchise.

### **3. FRANCHISE FEE AND ROYALTIES**

**3.1.** The Franchise Renewal Fee due for the renewal of this Franchise Agreement is Five Thousand Dollars (\$5,000.00). The renewal fee is payable upon the execution of this Agreement.

**3.2.** Beginning on Sunday at the end of the first week of operation of the restaurant and continuing each week thereafter during the term of this Agreement, Franchisee will owe to Company a continuing weekly royalty fee in an amount equal to five percent (5%) of the Gross Sales of the Restaurant, as defined below in Subsection 3.4.

**3.3.** All payments required by this Section 3 will be withdrawn from Franchisee's bank account by direct debit initiated by the Company on or before the Friday following the end of each week, and must be based on sales for the preceding week. The standard form of the direct debit authorization is attached to this Agreement as Exhibit D; however, Franchisee must sign whatever form of authorization is required by the relevant financial institutions. Any payment not actually received by Company on or before such date will be deemed overdue. If any payment is overdue, Franchisee must pay Company, in addition to the overdue amount, interest on such amount from the date it was due until paid, at the rate of eighteen percent (18%) per annum, or the maximum rate permitted by law, whichever is less. Company will be entitled to such interest in addition to any other remedies it may have.

**3.4.** "Gross Sales" includes all revenue from the sale of all services and products, vending machine and similar revenues, and all other income of every kind and nature related to the Franchised Business, including proceeds from business interruption insurance, and revenue from off-site events, whether for cash or credit and, in the case of credit, regardless of collection. "Gross Sales" does not include any sales

taxes or other taxes collected from customers by Franchisee for transmittal to the appropriate taxing authority, customer refunds, credits or allowances actually made by the Restaurant, employee discounts or the discounted value of payment by coupon from a Company-approved coupon program.

**3.5.** Franchisee must reimburse Company for all sales or use taxes, goods and services taxes, personal property taxes, gross receipt taxes, excise taxes, value added taxes and similar taxes imposed upon or required to be collected by Company, on account of goods or services furnished to Franchisee through sale, lease or otherwise. Franchisee will pay such taxes upon demand, and in the manner designated by the Company.

#### **4. SITE ACCEPTANCE**

Because this is a renewal of an existing Franchise Agreement, Franchisee and Company agree that Franchisee already is operating a Qdoba Mexican Grill location at the Accepted Location. If, during the term of this Agreement, Franchisee wishes to relocate the franchised restaurant, the following terms and conditions will apply.

**4.1.** Before acquiring a site for the Restaurant, whether through lease, purchase or otherwise, Franchisee must obtain Company's acceptance of the site. No site will be deemed accepted unless it has been expressly accepted in writing in a Notice of Site Acceptance. The acceptance or non-acceptance of any site submitted by Franchisee will be at the sole discretion of Company.

**4.2.** To request acceptance of a site for the Restaurant, Franchisee must submit to Company the then-current form of Site Package, such other information or materials as Company may reasonably require, and a letter of intent, or other evidence satisfactory to Company, confirming the Franchisee's favorable prospects for obtaining the site. If Company elects to visit the site before accepting or disapproving it, Franchisee must coordinate and arrange for the visit by Company's representative, and may be required to pay Company's reasonable related travel expenses.

**4.3.** If this franchise is granted in connection with a Development Agreement, Franchisee must also submit a Market Plan (as such term is defined in the Development Agreement) to Company before it will accept a site.

**4.4.** If Franchisee has not obtained legal possession of the Accepted Location within one hundred twenty (120) days of the date of Company's Notice of Site Acceptance, Company may retract such acceptance. Exhibit A to this Agreement will be amended when a new location is agreed upon by the parties.

**4.5.** Neither Company's examination and acceptance of a site, nor any information communicated to Franchisee regarding the site, constitute a representation, guaranty or warranty, express or implied, of the successful operation of any restaurant at such location. Such examination, acceptance and information indicate only that Company believes that the premises meet Company's minimum criteria as they existed

at the time of the evaluation. Franchisee and Company acknowledge that Company's site criteria may change over time, and that criteria that may have been effective with respect to accepting previous sites may not be effective for a new site. Additionally, demographic and economic factors, including competition from other food service businesses, could change, thereby changing the potential of the site. Company is not responsible for the failure of an accepted site to meet Franchisee's expectations as to customer traffic, revenue, profits or any other matter.

## **5. LEASE APPROVAL**

Because this is a renewal of an existing Franchise Agreement, Franchisee and Company agree that Franchisee already is operating a Qdoba Mexican Grill location at the Accepted Location under an approved lease. If, during the term of this Agreement, Franchisee wishes to relocate the franchised restaurant, the following terms and conditions relating to lease approval will apply.

**5.1.** If Franchisee intends to occupy the Restaurant premises under a lease, Franchisee may be required to submit the proposed lease to Company for its written approval before signing it.

**5.2.** Franchisee must use its best efforts to use Company's standard form lease or lease addendum. At a minimum, Franchisee must present Company's standard form lease or lease addendum to the landlord before the initiation of negotiations for the lease. Regardless, all leases must include the following terms and conditions:

**5.2.1.** The lease must provide that the premises may be used only for the operation of the Franchised Business.

**5.2.2.** The lease must provide that the landlord consents to Franchisee's use of such Proprietary Marks and signage as Company may require for the Franchised Business.

**5.2.3.** The lease must provide that the landlord and Franchisee each agree that whenever they send the other any letter, notice, amendment or other document pertaining to the lease or the premises, they will simultaneously send a copy to Company.

**5.2.4.** The lease must provide that Franchisee may not sublease or assign all or any part of its occupancy rights, or extend the term of, or renew, the lease without Company's prior written consent.

**5.2.5.** The lease must provide that Company has the right to enter the premises to make any modification necessary to protect Company's Proprietary Marks or to cure any default under the lease or under this Agreement.

**5.2.6.** The lease must provide that if Franchisee is in default under the lease, the landlord agrees that Company will have the right to cure the default or assume the lease, and sublease the premises for all, or any part of, the term of the lease.

**5.2.7.** The lease must provide that a memorandum of the lease will be recorded in the appropriate recorder's office in the county in which the Restaurant is located, and that a copy of the recording certificate will be delivered to Company.

**5.2.8.** The lease must provide that the term of the Lease, including options, will be at least ten (10) years.

**5.2.9.** If the Restaurant is to be located in a shopping center, mall or other multi-tenant facility, the lease must provide that the landlord agrees it will not lease other space within such facility to any food service entity that serves Mexican food or which wraps or burritos comprise more than thirty percent (30%) of the menu, or represent more than thirty percent (30%) of the sales.

**5.3.** Company's examination and approval of a lease, or any information communicated to Developer regarding the lease, does not constitute a representation, guaranty or warranty, express or implied, of the successful operation or profitability of any restaurant operated at such location, nor does such examination and approval constitute a legal review of the terms and conditions of that lease. Such examination, approval and information indicate only that Company believes that the premises and the terms of the lease meet Company's minimum criteria as they existed at the time of the evaluation.

## **6. CONSTRUCTION OF RESTAURANT**

Because this is a renewal of an existing Franchise Agreement, Franchisee and Company agree that Franchisee already is operating a Qdoba Mexican Grill location at the Accepted Location. If, during the term of this Agreement, Franchisee wishes to relocate the franchised restaurant, the following terms and conditions will apply.

**6.1.** In the course of designing the Restaurant, Franchisee must comply with all of the following requirements:

**6.1.1.** Franchisee must employ a qualified, licensed architect and/or engineer, subject to Company's approval.

**6.1.2.** Because the design of the Restaurant is crucial to the success of the Restaurant and to a uniform trade dress, Franchisee must strictly adhere to all design standards for the Restaurant as they change from time to time. Company will provide the Franchisee, at no additional cost, design details for the trade dress, equipment, vehicles, signs, decor features, furnishings, and fixtures for a standard Qdoba® restaurant. Franchisee must use all such items in the interior and exterior construction of the Restaurant. Franchisee may not use any different or additional



products in the Restaurant unless it submits those products to Company and obtains Company's prior written approval. Company may withhold its approval if, in its reasonable opinion, such materials fail to meet Company's standards.

**6.1.3.** Franchisee must obtain or prepare a schematic layout of the Restaurant site, which is subject to approval by Company. Franchisee may obtain a schematic layout at no charge from Company or, at Franchisee's own expense, hire an architect or other independent contractor to prepare one. If the schematic layout is prepared other than by Company, Franchisee must obtain Company's written approval of the schematic layout. If Company is to prepare the schematic layout for Franchisee, Franchisee or Franchisee's architect must provide Company with critical dimension measurements from which the layout will be prepared. Franchisee understands and agrees that Franchisee bears sole responsibility for verifying the critical dimensions. Company has no liability for any consequences that may arise from any inaccuracy in the dimensions provided by Franchisee or Franchisee's architect.

**6.1.4.** Franchisee must provide to Company a schedule setting forth in detail the expected date on which Franchisee will: (a) deliver the final construction plans for the Restaurant; (b) receive all necessary building permits; and (c) complete construction of the Restaurant.

**6.1.5.** Franchisee's architect and engineer must prepare construction plans for the site improvements based upon the schematic layout. Upon request, and at no cost to the Franchisee, Company will loan to Franchisee either construction plans for previously built Company-owned restaurants or a complete set of engineered prototypical drawings ("Prototype Drawings"). Any such construction plans or Prototype Drawings will remain the property of Company, and must be returned by Franchisee upon request. Before Company will loan Franchisee construction plans or Prototype Drawings, Company may require Franchisee's architect and engineer to sign non-disclosure agreements.

**6.1.6.** Franchisee must submit the construction plans, including all engineering plans, to Company for written approval. Company may withhold approval of any construction plans in its sole discretion. Once approved by Company, such final plans must not thereafter be changed or modified without the prior written permission of Company. Company's examination and approval of plans, or any information communicated to Developer regarding the plans, does not constitute a representation, guaranty or warranty, express or implied, of the successful construction, operation or profitability of any restaurant. Such examination, approval and information indicate only that Company believes that the plans meet Company's minimum criteria as they existed at the time of the evaluation.

**6.1.7.** Franchisee must obtain all zoning classifications and clearances that may be required by state or local laws, ordinances or regulations, or that may be necessary or advisable due to any restrictive covenants relating to Franchisee's location.

**6.2.** Before beginning any construction of the Restaurant, Franchisee must comply with all of the following requirements:

**6.2.1.** Franchisee must employ a qualified, licensed general contractor to construct the Restaurant and to complete all site improvements.

**6.2.2.** Franchisee must obtain the insurance required under Section 22 of the Franchise Agreement, and maintain that insurance during the entire period of construction.

**6.2.3.** Franchisee must obtain all permits and certifications required for the lawful construction of the Restaurant and, upon the request of Company, must certify in writing that all such permits and certifications have been obtained, or submit copies of such permits and certificates to Company.

**6.3.** At the time construction is completed, Franchisee must comply with the following requirements:

**6.3.1.** Franchisee must obtain all customary contractors' sworn statements and partial and final waivers of lien for construction, remodeling, decorating and installation services.

**6.3.2.** Franchisee must obtain all permits and certifications required for the lawful operation of the Restaurant, including but not limited to, a certificate of occupancy and health permits. Franchisee must certify in writing, upon the request of Company, that all such permits and certifications have been obtained, or submit copies of such permits and certificates to Company. Franchisee understands and acknowledges that Company will not dispatch its pre-opening orientation program staff to Franchisee's location until all permits necessary for the operation of the Restaurant have been received.

**6.3.3.** Franchisee must notify Company of the date of completion of construction. Franchisee understands and acknowledges that Franchisee may not open the Restaurant for business unless it receives the authorization of Company. Franchisee further understands and agrees that Company's authorization to open will be conditioned upon Franchisee's strict compliance with the specifications of the approved final plans and with the standards of the System.

## **7. TIMING OF OPENING**

Because this is a renewal of an existing Franchise Agreement, Franchisee and Company agree that Franchisee already is operating a Qdoba Mexican Grill location at the Accepted Location. If, during the term of this Agreement, Franchisee wishes to relocate the franchised restaurant, the following terms and conditions will apply.

**7.1.** Franchisee must open the Restaurant for business within fifteen (15) days of the date of the approval of Company described in Subsection 6.3.3.

7.2. Franchisee must open the Restaurant in compliance with all standards and specifications of Company within six (6) months after the execution of this Agreement, or as otherwise specified in this Agreement.

## **8. TRAINING**

8.1. Company must provide, and Franchisee must attend, an orientation program at Company headquarters. It will be provided at no expense to the Franchisee, except that all ancillary expenses, including but not limited to, salaries, wages, transportation, meals and lodging, will be the sole responsibility of Franchisee.

8.2. Company must provide a certified training program for up to three (3) individuals. Unless otherwise specified in writing by Company, Franchisee must ensure that the Designated Operating Partner (defined in Section 15.1), a General Manager (defined in Section 15.2), and one other employee have graduated from the certified training program. The program is approximately four (4) weeks in duration, but is subject to change at Company's discretion. Currently, all training is done in Denver, Colorado at our corporate offices and surrounding company operated restaurant locations. We reserve the right to designate another training facility in our sole discretion. If Franchisee is operating more than one Qdoba restaurant location, then the Designated Operating Partner of Franchisee must also complete an additional week of Regional Manager training. The additional week will consist of (but not be limited to) training program administration and multi-unit responsibilities. The initial training program will be provided at no expense to the Franchisee, except that all ancillary expenses, including but not limited to, transportation, meals, lodging, wages and insurance, will be the sole responsibility of Franchisee. Company may charge reasonable fees for individuals, training materials and for providing training in excess of the standard training specified in this section. Before opening the Restaurant, Franchisee must ensure that the Designated Operating Partner, Franchisee's General Manager, and one other employee have all attended and successfully graduated from Company's initial training program.

8.3. Company may provide such other refresher courses, seminars and training programs as it, in its sole discretion, deems necessary or desirable, and charge a reasonable fee therefor. For all training courses, seminars and programs, Franchisee or its employees will be responsible for any expenses incurred by them in connection with any such courses, seminars and programs, including but not limited to, the costs of transportation, meals, lodging, and any wages and insurance.

## **9. OTHER ASSISTANCE TO FRANCHISEE**

9.1. Company will provide Franchisee such on-site pre-opening and opening supervision and assistance and such continuing operational advice as Company deems advisable, subject to the availability of personnel.

9.2. Company will loan to Franchisee one copy of its confidential manual, or make it available to Franchisee through the Company intranet. The manual may consist

of more than one volume, including without limitation: Operations Manual, Trainers Guide, Store Opening Manual and Specifications Manual (collectively the "Manual") more fully described in Section 23 of this Agreement.

**9.3.** Company will provide to Franchisee, from time to time as Company deems advisable, advice and written materials concerning techniques of managing and operating the Franchised Business, including new developments and improvements in restaurant equipment, food products, packaging and preparation.

**9.4.** Company will seek to maintain the high standards of quality, appearance and service of the System, and will conduct inspections of the Restaurant, and evaluations of the products sold and services rendered at the Restaurant as it deems advisable.

**9.5.** Company will provide Franchisee with a template of the standardized chart of accounts, statement of earnings, and balance sheet, all of which Franchisee may use in the operation of the Franchised Business.

## **10. OPERATIONS AND MAINTENANCE OF RESTAURANT**

**10.1.** Franchisee understands and agrees that every detail of the Franchised Business is important to Franchisee, Company, and other franchisees in the effort to develop and maintain high operating standards, to increase the demand for the services and products sold under the System, and to protect the reputation and goodwill of Company. To ensure that the highest degree of quality and service is maintained, Franchisee must operate the Restaurant in strict conformity with such methods, standards and specifications as Company may from time to time prescribe in the Manual or otherwise in writing, including the following:

**10.1.1.** Franchisee must use the Restaurant premises solely for the operation of the Franchised Business, and must not use, or permit the use of, the premises for any other purpose or activity at any time. Franchisee may not install any electronic games, telephones, cash machines or similar devices without the prior written consent of the Company.

**10.1.2.** Franchisee must obtain a liquor license to sell certain required alcoholic beverages at the Restaurant. Franchisee may elect to obtain a license for the service of beer and wine in lieu of a liquor license for full service of alcoholic beverages if such license is available in the state where the Restaurant is located. Franchisee must submit an application for the license no later than thirty (30) days after execution of the Lease for the site by Franchisee. Franchisee is exempt from the requirements of this Subsection 10.1.2 if the cost of the license will exceed six thousand dollars (\$6,000) or if Company exempts Franchisee in writing.

**10.1.3.** Franchisee must use such credit card, debit card, gift card/loyalty card, check verification, direct debit, and electronic fund transfer systems as Company

may from time to time require. Franchisee may accept only such methods of payment that Company authorizes or approves.

**10.1.4.** Franchisee must keep the business open and in normal operation for such hours and days as Company may from time to time specify in the Manual or as Company may otherwise specify or approve in writing.

**10.1.5** Franchisee must use the Company-approved music content/supplier to play custom music content especially designed for Qdoba restaurants. Franchisee may not play or supply music through another supplier without the prior written consent of the Company.

**10.2.** Franchisee may offer catering service or delivery service from the Restaurant only with approval of Company. Such approval and the boundaries of any delivery territory are within Company's sole discretion.

**10.3.** After this Agreement has been in effect for five (5) years, Company may require Franchisee to complete such renovation, modernization and improvement of the Restaurant premises and fixtures, furniture and equipment as Company may reasonably require. Such work may include, without limitation, replacement or addition of signs, equipment, furnishings, fixtures, finishes and décor items, both interior and exterior, and redesign of the layout of the Restaurant, to reflect the then-current standards and image of the System. The maximum amount Franchisee will be required to spend on such mid-term refurbishment (aka "refresh") work is fifty thousand dollars (\$50,000).

**10.4** If, during the course of this Agreement, Franchisee makes the determination that a relocation of this Restaurant is in its best interest, Franchisee must follow the steps outlined in the Qdoba Restaurant Corporation Relocation Policy. The new site must be located in the same trade area and open within five days of the closure of your existing Restaurant. It is subject to a Relocation Fee of five thousand dollars (\$5,000).

## **11. COMPUTER AND POINT OF SALE SYSTEMS**

**11.1.** In the development and operation of the Restaurant, Franchisee must use certain brands, types, makes and models of communications and computer systems (including hardware and software) that Company may specify or require from time to time. This includes but is not limited to, a computerized point-of-sale system and a computer system for record keeping and other business functions. Company's development and modification of specifications for such systems may require Franchisee to purchase, lease and/or license new or modified point-of-sale systems, computer hardware and software and to obtain service and support for such systems, hardware and software during the term of this Agreement.

**11.2.** Company may transfer information from Franchisee's computerized point-of-sale and other systems via an electronic data transfer ("Polling"). Franchisee hereby

acknowledges Company's right to Poll at any time, at Company's sole discretion, and Franchisee agrees to set up the systems to maintain and facilitate such Polling.

## **12. INGREDIENTS, MATERIALS, SUPPLIES AND SUPPLIERS**

**12.1.** Franchisee must offer and sell in the Restaurant all food items, ingredients, supplies, materials and other products (hereinafter referred to collectively as "Products") that Company from time to time requires or authorizes, and Franchisee may not offer or sell any other Products or services without Company's written approval.

**12.2.** Franchisee must purchase all Products used or offered for sale at the Restaurant solely from suppliers, distributors and other vendors ("Suppliers") that have been approved in writing by Company, and have not thereafter been disapproved. From time to time or at Franchisee's request, Company will provide Franchisee with a list of suppliers approved to supply Products.

**12.3.** Franchisee must use in the development and operation of the Restaurant only those brands, types and models of equipment, vehicles, signs, fixtures and furnishings (collectively, "Equipment") that meet Company's standards and specifications. Franchisee may purchase approved brands, types and models of Equipment that meet Company's specifications only from Suppliers that have been approved by Company in writing, and have not thereafter been disapproved. From time to time or at Franchisee's request, Company will provide Franchisee with a list of suppliers approved to supply Equipment.

**12.4.** In an effort to ensure the uniformity of the Products sold by Franchisee to the public and the integrity of the System, Company may monitor all Suppliers, including alternate Suppliers. For such services, Company may require and accept monitoring fees, rebates and allowances, from the Suppliers. The sums, when received by Company, in no way reduce the sums owed by Franchisee to Company or to the Suppliers. Notwithstanding the foregoing, Company may rebate to the Franchisee's and Company's restaurant businesses, on a pro rata basis, the fees, rebates, and allowances received by Company in connection with the operation of the System less Company's cost of its monitoring and specifying all Suppliers.

**12.5.** Company approves Suppliers based upon their ability to meet Company's then-current standards and specifications for Products and Equipment, the adequacy of their quality controls, the capacity to supply Franchisee's needs promptly and reliably, and other factors. Franchisee must buy from Company-approved suppliers for certain categories. These categories include, but are not limited to, fountain beverages, proteins, produce, tortillas, sauces and salsas, logoed packaging and dry seasonings. If Franchisee wants to purchase any Products or Equipment in categories not listed above from a Supplier who is not yet approved, Franchisee must submit to Company a written request for such approval, or request the Supplier itself to do so. Company may require that its representatives be permitted to inspect the Supplier's facilities, and that samples from the Supplier be delivered to Company, and/or to an independent laboratory designated by Company, for testing. Franchisee or Supplier must pay to Company an

inspection fee not to exceed the reasonable cost of the inspection (to include any and all travel expenses associated with the inspection) and the actual cost of the tests. Company may also require that the Supplier comply with such other requirements as Company may deem appropriate, including payment of reasonable continuing inspection fees and administrative costs, and signing of non-disclosure agreements. Company reserves the right, at its option, to re-inspect the facilities and Products or Equipment of any such approved Supplier from time to time, and to revoke its approval if the Supplier's fails to meet any of Company's then-current criteria. Nothing in the foregoing should be construed to require Company to approve any particular Supplier.

**12.6.** Company may require Franchisee to purchase any Product or Equipment from a single Supplier, and may approve a Supplier to supply only certain Products or Equipment. Company may concentrate purchases with one or more Suppliers to obtain lower prices and/or advertising support or services for the benefit of the Qdoba® System. Company may be a Supplier for certain Products or Equipment.

**12.7.** Company may, in its sole discretion, designate certain Products to be produced and/or prepared at the restaurant. Company may, at any time, modify the list of these items.

**12.8.** Franchisee must pay all Suppliers (and all other providers of services or products) according to agreed-upon terms of payment, so as not to impair the reputation of Company, other franchisees or otherwise impair the Marks.

**12.9.** All advertising and promotional materials, signs, decorations, paper goods (including disposable food containers, napkins, menus and all forms and stationery used in the Franchised Business), and other items that may be designated by Company to bear the Proprietary Marks, must be used in the form, color, location and manner prescribed by Company. All such items must be submitted to Company for approval, and must meet Company's specifications regarding design, materials and manufacture.

**12.10.** Company may offer Franchisee the opportunity to participate in the testing and development of new menu items that may be developed or conceived by Company. If Franchisee agrees to participate in such testing and development, Franchisee understands and agrees that Franchisee may be required to purchase new Products and/or Equipment.

### **13. ADVERTISING**

The parties recognize the value of advertising and standardized advertising programs to the goodwill and public image of the System. Accordingly, the parties agree as follows:

#### **13.1. LOCAL ADVERTISING AND PROMOTION**

**13.1.1.** Franchisee must annually spend not less than two percent (2%) of its Gross Sales on local advertising and promotion.

**13.1.2.** All local advertising and promotion by Franchisee in any medium must be conducted in a dignified manner, and must conform to the standards and requirements of Company as set forth in the Manual or elsewhere in writing. Franchisee must not use any advertising and promotional plans and materials that have not been prepared, or previously approved in writing, by Company within the previous twelve (12) months. If Franchisee wants to use any other plans or materials, Franchisee must submit such plans and materials to Company and obtain written confirmation that the Company has received them. Company must approve or disapprove such plans and materials within fifteen (15) days after Company receives them. If the plans or materials are not disapproved within fifteen (15) days, they are deemed approved. Franchisee must not use plans or materials unless and until Company approves them, and Franchisee must promptly discontinue use of any advertising or promotional plans or materials upon notice from Company. Any and all costs associated with discontinuing the use of such plans and materials will be borne exclusively by Franchisee.

**13.1.3.** Franchisee must participate in the Qdoba Rewards loyalty program, which provides our customers and guests with certain rewards including free food. Qdoba Rewards is an important differentiator between Company and its competitors, and Franchisee must agree to promote, supply, and honor Rewards Cards and redemptions. Additionally, Company may from time to time develop and create advertising and sales promotion programs designed to promote and enhance the collective success of all Restaurants operating under the System. Franchisee shall participate in all such advertising and sales promotion programs in accordance with the terms and conditions established by Company for each program.

## **13.2. NATIONAL MARKETING AND PROMOTION**

**13.2.1.** Franchisee must make a weekly contribution to the Qdoba National Marketing Fund ("National Fund"). Company will determine the amount of the required contribution, which will not exceed two percent (2%) of Franchisee's weekly Gross Sales from the Franchised Business. Company must make a weekly contribution to the National Marketing Fund for each of its company-owned restaurants, and the rate of contribution must be the same as the rate of contribution of the majority of the Restaurants in the System.

**13.2.2.** Franchisee's contribution to the National Fund will be made by direct debit from Franchisee's bank account, in the same manner as referenced in Section 3.3 of this Agreement.

**13.2.3.** All sums paid into the National Fund must be maintained in an account separate from the other monies of Company, and must not be used to defray any of Company's expenses, except such reasonable salaries, expenses, administrative costs and overhead, if any, as Company may incur in activities reasonably related to the administration or direction of the National Fund, and the execution of marketing, promotional and advertising programs for franchisees and the System. The National



Fund and its earnings will not otherwise inure to the exclusive benefit of Company. Company must maintain separate bookkeeping accounts for the National Fund.

**13.2.4.** The National Fund, including all contributions thereto and any earnings thereon, must be used exclusively to maintain and administer the National Fund, and direct and prepare advertising and/or promotions to build the brand including, among other things, preparing and conducting television, radio, internet, magazine, and newspaper advertising campaigns; purchasing radio, television, internet, magazine, newspaper and other media for the distribution of advertising campaigns; advertising through direct mail and outdoor billboards; preparing and conducting research which may include awareness and usage surveys, focus groups marketing surveys and consumer feedback surveys; preparing and producing internal marketing materials; marketing salaries; preparing and executing e-mail and internet-based marketing programs; employing advertising agencies and other professional consultants; public relations activities; and providing promotional brochures and other marketing materials to the Restaurants operated under the System.

**13.2.5.** It is anticipated that all contributions to the National Fund will be used during the fiscal year within which the contributions are received. If, however, excess funds remain in the National Fund at the end of such fiscal year, all expenditures in the following fiscal year(s) must be made first out of excess funds from previous years, next out of funds in the current year, and finally from contributions.

**13.2.6.** A statement of Sources and Uses of the National Fund will be prepared annually by the Company, and will be made available to Franchisee for inspection, upon request.

**13.2.7.** Company will oversee all marketing, advertising and promotional programs paid for through the National Fund, and has sole discretion to approve or disapprove the creative concepts, materials and media used in such programs, and the placement and allocation of such programs. Franchisee acknowledges and agrees that the National Fund is intended to increase general public recognition, acceptance and use of the Proprietary Marks for the benefit of the System, and that in administering the National Fund, Company is under no obligation to make expenditures for Franchisee that are equivalent or proportionate to its contribution, or to ensure that any particular franchisee benefits directly or pro rata from the advertising or promotion conducted under the National Fund.

**13.2.8.** Although the National Fund is intended to be of perpetual duration, Company maintains the right to terminate the National Fund at its sole discretion. The National Fund will not be terminated, however, until all monies in the National Fund have been expended for advertising or promotional purposes or refunded to Franchisees pro rata.

### **13.3. ADVERTISING COOPERATIVE**

**13.3.1.** Franchisee acknowledges and agrees that Company has the right, in its discretion, to designate any geographical area for purposes of establishing an advertising cooperative covering the Franchisee's Protected Territory. If such a cooperative has been established at the time Franchisee commences operations under this Agreement, Franchisee must immediately become a member of such cooperative. If such a cooperative is established at any later time during the term of this Agreement, Franchisee must become a member of such cooperative no later than thirty (30) days after the date on which Franchisee is notified that the cooperative has commenced operation. In no event will Franchisee be required to be a member of more than one cooperative as to a particular Restaurant. The following provisions will apply to each cooperative:

**13.3.2.** Each cooperative will be organized and governed in a form and manner approved in advance by Company in writing, and will commence operation on a date chosen by Company.

**13.3.3.** Each cooperative will be organized for the exclusive purposes of administering regional advertising programs and developing standardized promotional materials for use by the members in local advertising.

**13.3.4.** No advertising or promotional plans or materials may be used by a cooperative or furnished to its members without the prior approval of Company. All such plans and materials must be submitted to Company in accordance with the procedure set forth in Subsection 13.1.2. of this Agreement.

**13.3.5.** Each cooperative may require its members to make contributions to the cooperative in such amounts as are determined by the cooperative; however, Franchisee will not be required to make a contribution to any cooperative of more than two percent (2%) of the Gross Sales of the Restaurant(s) in the cooperative's geographic territory. Any contribution to such cooperative will be credited against Franchisee's spending obligation on local advertising; however, Franchisee must in any case spend not less than two percent (2%) on local advertising, either through a cooperative or on its own, as required in Section 13.1.1 hereof.

**13.3.6.** Franchisee understands and acknowledges that after becoming a member of a cooperative, it will be subject to the cooperative's by-laws. Franchisee further acknowledges and agrees that Company bears no responsibility for the Cooperative's actions.

#### **13.4. OPENING ADVERTISING PROGRAM**

Because this is a renewal of an existing Franchise Agreement, Franchisee and Company agree that Franchisee already is operating a Qdoba Mexican Grill location at the Accepted Location. If, during the term of this Agreement, Franchisee wishes to relocate the franchised restaurant, the following terms and conditions will apply for the relocated restaurant.

Franchisee must conduct an opening advertising program for the Restaurant, which will begin no later than thirty (30) days after the opening of the Restaurant. The actual dates of the advertising program will be determined by Franchisee after consultation with Company. Franchisee agrees to spend not less than five thousand dollars (\$5,000) for the opening advertising program. The opening advertising program must conform to Company's requirements, and must use the media and advertising formats designated by Company. Franchisee must submit vendor invoices for opening advertising expenses to Company within sixty (60) days of the commencement of the advertising program to evidence compliance with this Section 13. Franchisee's failure to conduct its opening advertising program as required in this Agreement will be a default under this Agreement, entitling Company to the remedies set forth in Section 29 of this Agreement. In addition to such remedies, Company may deduct from Franchisee by direct debit, and contribute to the National Fund any amount not spent by franchisee during the opening advertising program, up to the limit of five thousand dollars (\$5,000).

#### **14. ACCOUNTING AND RECORDS SYSTEMS**

**14.1.** Franchisee may be required to use a bookkeeping, accounting and record keeping system conforming to the Company's requirements, including a general ledger system that uses a chart of accounts prescribed by Company from time to time. Franchisee's books, records and accounts must be complete and accurate, and maintained in accordance with the generally accepted accounting principles in use in the United States. Franchisee must retain these documents for at least three (3) years from the date of their preparation.

**14.2.** With respect to the operation and financial condition of the Restaurant, Franchisee must report its results to Company in a manner consistent with Company's fiscal year which consists of thirteen (13) four-week accounting periods beginning on a Monday and ending on a Sunday (a "Period"), or in a manner consistent with Franchisee's fiscal year. Franchisee must advise Company of the beginning and ending dates of the chosen fiscal year before the beginning of that fiscal year.

**14.3.** Franchisee must prepare financial reporting materials in the form required by Company, and submit those materials to Company, as follows:

**14.3.1.** Each Monday, no later than 10:00 a.m., Central Time, by electronic data transfer, computerized polling, or such other method as Company specifies, Franchisee must submit a report of the net sales, manager comps, promotions, and check counts of the preceding week, broken down by day, and any other information Company may require. Franchisee must allow Company to remotely access its computerized accounting systems, in Company's reasonable discretion, for such reporting purposes.

**14.3.2.** Upon Company's request, Franchisee must submit its state sales tax returns to Company, and must do so by fax, mail or such other means as Company specifies.

**14.3.3.** Within thirty (30) days after the end of each Period, Franchisee must submit by fax, mail or such other means as Company specifies, an unaudited profit and loss statement showing the then-current Period and the year-to-date business results of the franchise.

**14.3.4.** Within thirty (30) days after the end of each quarter of the fiscal year, Franchisee must submit by fax, mail or such other means as Company specifies, a quarterly balance sheet (which may be unaudited). Each such submission must be signed by Franchisee or by Franchisee's treasurer or chief financial officer attesting that it is true and correct.

**14.3.5.** Within thirty (30) days after the end of each quarter of each fiscal year, Franchisee must submit by fax, mail or such other means as Company specifies, reports of any income and expense items of the Restaurant. Company may use those reports to provide income and expense information to prospective or existing franchisees. Company agrees that it will not provide prospective or existing franchisees with any specific financial results of any individual restaurant.

**14.3.6.** Within ninety (90) days after the end of each fiscal year, Franchisee must submit by fax, mail or such other means as Company specifies, a financial statement including a profit and loss statement, balance sheet and statement of cash flow showing the results of operations of the Franchised Business during said fiscal year, prepared by a certified public accountant satisfactory to Company.

**14.3.7.** Franchisee must also submit to Company, for review or auditing, such other forms, reports, records, information and data as Company may reasonably require, in the form and at the times and places as Company may reasonably require. All such materials must be prepared at Franchisee's own expense, in the format prescribed by Company and transmitted in the form prescribed by Company. At Company's discretion, Company may also obtain such information through polling.

**14.4.** Company or its designated agents may at any time enter and inspect Franchisee's place of business and examine and copy, at Company's expense, the books, records and tax returns of Franchisee. Company may also, at any time, have an independent audit made of the books of Franchisee. If an inspection or audit reveals that any payments have been understated in any report to Company, then Franchisee must pay to Company upon demand the amount understated, in addition to interest from the date such amount was due until paid, at the rate of eighteen percent (18%) per annum, or the maximum rate permitted by law, whichever is less. If an inspection or audit discloses an understatement in any report of two percent (2%) or more of Franchisee's Gross Sales for the audited period, Franchisee must, in addition, reimburse Company for any and all costs and expenses connected with the inspection and audit, including, without limitation, travel, lodging and wage expenses, and reasonable accounting and legal costs. The foregoing remedies are in addition to any other remedies Company may have.

## **15. PERSONNEL OF THE FRANCHISED RESTAURANT**

**15.1.** Subject to Company's prior written approval, Franchisee must choose one individual as the Designated Operating Partner to oversee the operation of the Restaurant (and any other Qdoba restaurants franchised by Franchisee). If Franchisee is operating more than one Qdoba restaurant, then the Designated Operating Partner must have at least three (3) years of multi-unit experience in the operation of a casual-dining, fast-food, family-dining or cafeteria-style restaurant. Franchisee hereby authorizes Company to communicate with and give notice to Franchisee through the Designated Operating Partner.

**15.2.** Franchisee must employ at all times a full-time General Manager who must have at least one (1) year of experience as a General Manager in the restaurant industry. That individual must make operating the Restaurant his/her sole employment, and dedicate his/her full efforts toward running the Restaurant.

**15.3.** The Designated Operating Partner and General Manager must attend Company's certified training program, as specified in Section 8, above.

**15.4.** The Designated Operating Partner, Franchisee's General Manager and other employees, must attend such refresher courses, seminars and other training programs as Company may reasonably require from time to time. Company, in its sole discretion, may determine that additional personnel may be required to attend and successfully complete its certified training program or other training programs. For all training courses, seminars and programs, ancillary expenses, including but not limited to transportation, meals, lodging, wages and insurance will be the sole responsibility of Franchisee.

**15.5.** Franchisee must employ at all times a competent, conscientious, trained staff. Franchisee must take all necessary steps to ensure that all of its employees preserve good customer relations and comply with any dress code Company prescribes.

## **16. COMPLIANCE WITH LAWS AND HEALTH STANDARDS**

**16.1.** Franchisee must meet and maintain the highest health standards and ratings applicable to the operation of the Restaurant. Franchisee must furnish to Company a copy of any inspection report, warning, citation, certificate or rating applicable to the health or safety standards in the operation of the Restaurant, within five (5) days after receipt thereof.

**16.2.** Franchisee must maintain the Restaurant in a high degree of sanitation, repair and condition. Franchisee must make such additions, alterations, repairs and replacements at the Restaurant that Company deems necessary for that purpose. All such work must be completed within a reasonable time, as specified by Company. Such work may include, without limitation, periodic repainting, replacement of

furnishings, equipment décor, and obsolete signs, and repair of any damages to tables, countertops, floors, columns or other furnishings or fixtures visible to the customer.

**16.3.** Franchisee must at all times, at its own expense, conform to and comply with all federal, state and local laws, ordinances and regulations and credit card industry standards now in force or that are hereafter enacted affecting the operation of the Franchised Business, including but not limited to the Americans with Disability Act and any similar state law.

## **17. INSPECTIONS OF THE RESTAURANT**

**17.1.** Franchisee must permit Company or its agents, at any reasonable time, to remove samples of food or non-food items from Franchisee's inventory, or from the Restaurant, without payment therefor, in amounts reasonably necessary for testing by Company or an independent laboratory to determine whether said samples meet Company's then-current standards and specifications. In addition to any other remedies it may have under this Agreement, Company may require Franchisee to bear the cost of such testing if the supplier of the item has not previously been approved by Company or if the sample fails to conform with Company's standards or specifications.

**17.2.** Franchisee must allow Company and its agents to enter upon the Restaurant premises at any time for the purpose of conducting inspections and audits. Franchisee must cooperate with Company's representatives in such inspections and audits by rendering such assistance as they may reasonably request. Upon notice from Company or its agents, and without limiting Company's other rights under this Agreement, Franchisee must take such steps as necessary to immediately correct any deficiencies detected during any such inspection. If Franchisee fails to correct such deficiencies within a reasonable time, as determined by Company, Company may correct such deficiencies. Franchisee must reimburse Company for its reasonable expenses for doing so, payable by Franchisee immediately upon demand.

**17.3.** Franchisee must comply with all other requirements set forth in this Agreement. Additionally, Franchisee acknowledges and agrees that it must adhere to all mandatory specifications, standards and operating and inspection procedures prescribed from time to time by Company in the Manuals or otherwise communicated to Franchisee in writing. Franchisee's failure to adhere to such mandatory specifications, standards, operating procedures and inspection procedures, or to pass Company's quality control inspections, constitutes grounds for termination of this Agreement.

## **18. GUARANTEES**

**18.1.** If Franchisee is not an individual, Franchisee must have each of its Principal Owners, as hereinafter defined, sign and deliver to Company concurrently with this Agreement a guaranty of Franchisee's obligations under this Agreement. Spouses of Principal Owners may also be required to sign the Guaranty. The guaranty must be in the form of Guaranty and Assumption of Franchise Owner's Obligations ("Guaranty") attached hereto as Exhibit C.

**18.2.** The term "Principal Owner" means each person or entity that: (a) has an indirect or direct equity interest of five percent (5%) or more in Franchisee or the franchise; or (b) has any direct or indirect equity interest in Franchisee or the franchise and is also a developer or franchise owner of a Qdoba® restaurant other than the Restaurant operated by the Franchisee. A Principal Owner will remain obligated under the Guaranty even if its equity interest falls below five percent (5%) unless the reduction is the result of the transfer of all that person's or entity's interest in Franchisee or the franchise, in compliance with this Agreement.

**18.3.** If any person or entity becomes a Principal Owner after this Agreement is signed, Franchisee must promptly have the new Principal Owner, and his/her spouse, if Company requires, sign a Guaranty, and must deliver it to Company.

## **19. SECURITY INTEREST**

**19.1.** To secure prompt and complete payment of the "Obligations," as hereinafter defined, Franchisee hereby grants to Company a security interest in and to all Franchisee's assets of any kind or nature used or useful in connection with the ownership and operation of the Franchised Business, including without limitation, the following ("the Collateral"):

**19.1.1.** all equipment, furnishings, fixtures, merchandise, inventory, goods and other tangible personal property;

**19.1.2.** all accounts, accounts receivable, other receivables, contract rights, leases, software, chattel paper, and general intangibles;

**19.1.3.** all instruments, documents of title, policies and certificates of insurance, securities, bank deposits, bank accounts, and cash;

**19.1.4.** all books, records, and documents relating to any Collateral;

**19.1.5.** all permits, licenses, and franchises for the operation and ownership of the Franchised Business, and all rights incident or appurtenant to such licenses, authorizations and permits; and

**19.1.6.** all accession, additions, and improvements to, and all replacements, substitutions, and parts for, and all proceeds and products of the Collateral, including proceeds of insurance.

**19.2.** The Obligations include all amounts owed by Franchisee to Company from time to time under this Agreement or any other agreement between Company and Franchisee, all interest payable under this Agreement, all costs and expenses incurred by Company in order to enforce this Agreement, and the security interest granted herein and to collect the amount due hereunder, and any advances made by Company to Franchisee.

**19.3.** Franchisee must, at its sole expense, sign and deliver to Company such additional documents, instruments and agreements as reasonably required by Company to create, maintain, perfect, or assure the priority of the security interest granted by this Agreement. Company is hereby appointed as Franchisee's agent and attorney-in-fact, which appointment is coupled with an interest and will be irrevocable so long as any of the Obligations remain outstanding, to sign and deliver such documents, endorsements and instruments, and to take all such other action (to the maximum extent permitted by law) in the name of and on behalf of Franchisee as Company may deem necessary or advisable to create, maintain, perfect, assure the priority of, or foreclose, its security interest in and lien of the Collateral.

**19.4.** Upon request, Company will sign and deliver to Franchisee its standard Consent and Subordination Agreement, to subordinate its security interest in the Collateral (other than the Franchise) to an institutional lender that is lending funds to Franchisee or its Affiliate for purposes relating to the acquisition or improvement of the Franchised Business.

## **20. OWNERSHIP AND USE OF MARKS**

**20.1.** Franchisee understands and acknowledges that Company owns the Proprietary Marks, that Franchisee has no interest whatsoever in or to the Proprietary Marks, and that Franchisee's right to use the Proprietary Marks is derived solely from this Agreement, and is limited by the terms of this Agreement and all applicable specifications, standards and operating procedures prescribed by Company from time to time. Any unauthorized use of the Proprietary Marks by Franchisee will constitute an infringement of the rights of Company in and to the Proprietary Marks.

**20.2.** Franchisee agrees that any goodwill established by Franchisee's use of the Proprietary Marks or System will inure to the exclusive benefit of Company, and Franchisee acknowledges that this Agreement does not confer upon Franchisee any goodwill or interests in the Proprietary Marks or System.

**20.3.** Franchisee must not, during the term of this Agreement or after its termination or expiration, contest the validity or ownership of any of the Proprietary Marks or assist any other person in contesting the validity or ownership of any of the Proprietary Marks.

**20.4.** All provisions of this Agreement applicable to the Proprietary Marks will apply to any additional trademarks, service marks, logo forms and commercial symbols that Company hereafter authorizes Franchisee to use in connection with the Franchised Business.

**20.5.** Franchisee agrees to use the Proprietary Marks as the sole identification of the Restaurant; however, Franchisee must identify himself as the independent owner at the Restaurant in the manner prescribed by Company. Franchisee agrees to display the Proprietary Marks prominently and in the manner prescribed by Company on signs, menus and forms. Further, Franchisee agrees to give such notices of trademark and



service mark registrations and copyrights as Company specifies, and to obtain such fictitious or assumed name registrations as may be required under applicable law.

**20.6.** Franchisee may not use any Proprietary Mark as part of any corporate or trade name or with any prefix, suffix or other modifying words, terms, designs or symbols, or in any modified form. Franchisee may not use any Proprietary Marks in connection with any business or activity other than the Franchised Business or in any manner not explicitly authorized in writing by Company. Franchisee may not establish a website or domain name that in any way uses or incorporates a Proprietary Mark, or links to Company's website, without the prior written consent of Company.

**20.7.** Failure to strictly comply with any and all provisions regarding use of the Marks in this Section 20 will be a breach of this Agreement and will be grounds for termination of this Agreement without the opportunity to cure, as more fully set forth in Section 29.

**20.8.** If Company determines, in its sole discretion, that it is advisable for Company and/or Franchisee to modify or discontinue use of any Proprietary Mark, or use one or more additional or substitute trademarks or service marks, Franchisee agrees to comply with Company directives regarding the use of such Marks within a reasonable time as established by Company. The sole liability and obligation of Company in any such event will be to reimburse Franchisee for the out-of-pocket costs of complying with this obligation.

**20.9.** Franchisee must immediately notify Company in writing if Franchisee becomes aware of any apparent infringement or imitation of any Mark, any challenge to Franchisee's use of any Mark, any claim by any person of any rights in any Mark, or existence of any similar trade name, trademark or service mark. Franchisee may not communicate with any person, other than Company and its counsel, in connection with any infringement, challenge or claim, except as otherwise required by law. Company has the exclusive right to control any litigation, U.S. Patent and Trademark Office proceeding or other legal or administrative proceeding relating to any Proprietary Mark, and sole discretion to take such action as it deems appropriate. Franchisee agrees to sign any and all instruments and documents, render such assistance and do such acts and things as Company deems necessary or advisable to protect and maintain the interests of Company in any such litigation or proceeding, or to otherwise protect and maintain the interests of Company in the Marks.

**20.10.** Company agrees to indemnify Franchisee against, and to reimburse Franchisee for, all damages for which he is held liable in any proceeding in which Franchisee's use of any Proprietary Mark pursuant to and in compliance with this Agreement is held to constitute trademark infringement, unfair competition or dilution, and for all costs reasonably incurred by Franchisee in the defense of any such claim brought against it or in any such proceeding in which it is named as a party, provided that Franchisee has timely notified Company of such claim or proceeding, has otherwise complied with this Agreement, and has tendered complete control of the defense of such to Company. If Company defends such claim, Company will have no obligation to

indemnify or reimburse Franchisee with respect to any fees or disbursements of any attorney retained by Franchisee.

**20.11.** All promotional materials, advertising materials, discoveries, inventions, ideas, business methods or improvements (whether or not patentable or capable of being copyrighted) relating to or arising from the operation of a Qdoba® Restaurant, whether created by Franchisee, Franchisee's owners (if Franchisee is not an individual) or their agents and independent contractors, must be promptly disclosed by Franchisee to Company, and will be Company's sole and exclusive property and, if applicable, will be deemed to be works made-for-hire for Company. Franchisee and its owners (if applicable) will sign, and cause their agents and independent contractors to sign, whatever assignment or other documents Company requests to evidence Company's ownership and to assist Company in obtaining copyright registrations or patent rights. Franchisee and its owners (if applicable) will use such items solely in connection with activities permitted under this Agreement, and will not use any substantially similar material for any purpose during or after the term of this Agreement.

## **21. CASUALTY LOSSES**

**21.1.** If the Restaurant premises are damaged or destroyed by fire or other casualty, or if Franchisee is required by any governmental authority to repair or reconstruct the premises, Franchisee must repair or reconstruct the premises in accordance with Company's then-current design standards, notwithstanding Subsection 10.3 of this Agreement. Such repair or reconstruction must be completed within a reasonable time in light of the circumstances. If the repairs or reconstruction cannot be completed within ninety (90) days after the casualty loss, then Franchisee will have thirty (30) days after such event in which to apply for Company's approval to relocate the Restaurant or for additional time to reconstruct the premises. Such approval will not be unreasonably withheld, but may be conditioned upon the payment of an agreed-upon minimum royalty while the restaurant is not in operation.

## **22. INSURANCE**

During the term of this Agreement, Franchisee must obtain and maintain in full force and effect, at his own expense, such insurance coverages as may be required of Franchisees by Company. Such requirements will be specified in the Manuals, or may be specified in any lease agreement between Company and Franchisee or otherwise provided to Franchisee in writing by Company. Before the opening of the Restaurant and thereafter, throughout the term of this Agreement, Franchisee must furnish to Company evidence satisfactory to Company that such insurance coverages are in effect in the form of Certificates of Insurance, any insurance policy endorsements and a copy of the Franchisee's insurance policy(ies). Renewal Certificates of Insurance must be delivered to Company thirty (30) days before the expiration date of all policies. All deductible amounts on all insurance policies required under this Agreement must be disclosed in writing to, and approved by, Company and noted on the applicable Certificate of Insurance. The insurance requirements, including but not limited to

coverages and policy limits, may be increased or modified from time to time by Company at its sole discretion. Requirements as of the date hereof are:

**22.1.** Commercial General Liability insurance, including Products Liability coverage, and Broad Form Contractual Liability coverage, including liquor liability coverage (if applicable), written on a "per occurrence" policy form in an amount of not less than two million dollars (\$2,000,000) combined single limit per occurrence and aggregate. Such insurance must insure the contractual liability of Franchisee under the indemnification provisions of this Agreement.

**22.2.** Business automobile liability insurance, including owned, leased, non-owned and hired automobile coverage with a limit of not less than one million dollars (\$1,000,000) per accident.

**22.3.** Workers' Compensation insurance as required by law and Employer's Liability insurance with a limit of not less than one million dollars (\$1,000,000).

**22.4.** "All Risk" property insurance covering: (a) the building, furniture, fixtures, equipment, inventory and other tangible property of the Franchised Restaurant, including plate glass coverage, on a full one hundred percent (100%) repair or replacement value basis; (b) Business Interruption/ Business Income insurance (at least one (1) year of actual loss sustained), including Extra Expense insurance, so as to re-establish normal business operations; and (c) loss of rents insurance covering a minimum of twelve (12) months' fixed minimum rent.

**22.5.** All insurance policies required of the Franchisee under this Agreement: (a) must be primary and non-contributory; (b) must be issued by an insurance company(ies) with a rating of not less than "A-VIII" in the current Best Insurance Rating Guide or approved by Company; (c) must name Company and its Affiliates as "additional insureds," and must contain an "Additional Insured-Designated Person or Organization" endorsement (or its equivalent), except workers' compensation insurance only, without any qualifying language; (d) must provide that the insurance cannot be canceled, materially changed, or non-renewed, except upon thirty (30) days' advance written notice to Company; and (e) must contain a waiver of subrogation rights of the insurer(s) against Company, which waiver will be effective regardless of whether any loss is caused by the act, omission or negligence of Company, and must contain a "waiver of transfer rights of recovery against others" endorsement (or its equivalent). If developer changes insurance carriers for any of the required coverages, it must submit new certificates of insurance for such coverages.

## **23. CONFIDENTIAL OPERATING MANUAL**

**23.1.** In order to protect the reputation and goodwill of Company, and to maintain high standards of operation under Company's Proprietary Marks, Franchisee must conduct its business in accordance with the Manual (as defined in Section 9.2 hereof), one copy of which Franchisee will receive on loan from Company for the term of this Agreement.

**23.2.** Franchisee must at all times treat the Manual, any other manuals created for, or approved for use in, the development or operation of the Franchised Business, and the information contained therein, as secret and confidential, and must use all reasonable efforts to maintain such information as secret and confidential, as specified in Section 24 below, including but not limited to keeping the Manual in a secure place on the Restaurant premises (once constructed) at all times.

**23.3.** The Manual will at all times remain the sole property of Company.

**23.4.** Franchisee understands and acknowledges that Company may, in its sole discretion, modify or replace the Manual or its contents. Franchisee agrees to conduct its business in accordance with all terms of Company's then-current Manual. Franchisee must at all times ensure that the Manual is kept current and up to date. If there is any dispute as to the contents of the Manual, the terms of the master copy of the Manual maintained by Company at Company's home office will be controlling.

## **24. CONFIDENTIAL INFORMATION**

**24.1.** Franchisee understands and acknowledges that Company has invested, and continues to invest, considerable sums of money in developing the System. Because of the competitive nature of the restaurant business, and to protect the legitimate interest of Company and other franchisees, it is necessary to protect certain information about the System as confidential.

**24.2.** For purposes of this provision, "Confidential Information" includes product recipes and tests, ingredients used in Company's products, product preparation procedures, customer service measures and techniques, franchise support procedures, supplier relationship and distribution system information, new product development information, the Manual, growth plans or strategies, real estate development plans or strategies, restaurant design plans, proposed restaurant sites, equipment, computer systems, business and development plans and strategies, training programs, consumer research results, marketing and advertising strategies and materials, and all other information designated by Company as confidential.

**24.3.** Confidential Information does not include: (a) information, concepts, methods, procedures or techniques that are, or become, generally known in the quick-service and quick-casual restaurant industries in the United States, other than through disclosure by Franchisee whether deliberate or inadvertent; (b) the disclosure of Confidential Information in judicial or administrative proceedings to the extent that Franchisee is legally compelled to disclose such information, provided that Franchisee has afforded Company with the opportunity to obtain an appropriate protective order or other assurance that the information will be treated as confidential; or (c) information that Franchisee can demonstrate came to its attention prior to disclosure thereof by Company.

**24.4.** Franchisee will be provided with Confidential Information in connection with its development and/or operation of the Franchised Business. Franchisee agrees

that both during the term of this Agreement and thereafter, Franchisee: (a) will use the Confidential Information only in the operation of the Franchised Business, and not in connection with any other business; (b) will not make copies of, duplicate, record, or otherwise reproduce any Confidential Information without the express written consent of Company; (c) will not communicate, divulge or disclose the Confidential Information to any person or entity who does not need access to it to operate the Franchised Business; and (d) will not use the Confidential Information, or allow it to be used, for the benefit of any third party.

**24.5.** Franchisee acknowledges and agrees that all Confidential Information is, and will remain, the sole and exclusive proprietary property of Company.

**24.6.** Company requires that all shareholders, partners and other investors in Franchisee or the Franchised Business who may have access to such Confidential Information sign the Confidentiality and Non-Competition Agreement attached as Exhibit E.

**24.7.** Company requires Franchisee to obtain from all management personnel and all independent contractors who may have access to Confidential Information, as a condition of their employment, covenants that they will maintain the confidentiality of all Confidential Information that they receive in connection with their employment by Franchisee. Such covenants will be in a form satisfactory to Company, including, without limitation, specific identification of Company as a third-party beneficiary of such covenants with the independent right to enforce them. Franchisee may be required to provide Company with copies of all such covenants.

**24.8.** Franchisee understands and acknowledges that any failure to comply with the requirements of this Section 24 will result in substantial injury and damage to Company for which there is no adequate remedy at law. For these reasons, if Franchisee violates or threatens to violate any term of this provision, the Company will be entitled to, in addition to any other remedies and damages available, injunctive or other equitable relief, to restrain the violation of this provision by Franchisee and its agents or employees. Franchisee agrees to pay all court costs and reasonable attorneys' fees incurred by Company in obtaining specific performance of, or an injunction against violation of, the requirements of this Section 24, in addition to any other claims to which Company may be entitled.

## **25. TRANSFER OF INTEREST**

### **25.1. TRANSFER BY COMPANY**

Company may transfer or assign this Agreement and all or any part of its rights or obligations herein to any person or legally formed entity. Any such assignment will inure to the benefit of any assignee or other legal successor to the interest of Company.

### **25.2. TRANSFER BY FRANCHISEE**

**25.2.1.** Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee (or if Franchisee is a legally formed entity, Franchisee's shareholders, partners or members), and that Company has granted this franchise in reliance upon Franchisee's business skill, financial capacity and personal character. Accordingly, neither Franchisee nor any individual or entity that directly or indirectly owns any interest in Franchisee, this Agreement or the Franchised Business may sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber (hereinafter "Transfer") any direct or indirect interest in Franchisee, this Agreement or the Franchised Business, or permit such a Transfer, without the prior written consent of Company. Any purported Transfer, by operation of law or otherwise, not having the written consent of Company required by this Section 25 will be null and void, and will constitute a material breach of this Agreement. Furthermore, Franchisee may not retain or otherwise contract with any entity that is not a party to this Agreement to provide management or administrative services for the Restaurant unless such entity is either an employee of Franchisee or has been approved in writing by Company. Company may condition such approval on the receipt of a non-disclosure covenant from the third party.

**25.2.2.** Company may not unreasonably withhold its consent to a Transfer of any interest in Franchisee, this Agreement or in the Franchised Business; however, Company may require any or all of the following as conditions of its approval:

**25.2.2.1.** All of the accrued monetary obligations and all other outstanding obligations of Franchisee, its Principal Owners and Affiliates to Company and its Affiliates must have been satisfied.

**25.2.2.2.** Franchisee, its Principal Owners and Affiliates must not be in default of any provision of this Agreement, or any other agreement with Company or its Affiliates.

**25.2.2.3.** At the time of Transfer, Franchisee and each Principal Owner must sign a general release, in a form satisfactory to Company and its Affiliates, releasing any and all claims against Company and its Affiliates, including their officers, directors, shareholders and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances, and unknown claims.

**25.2.2.4.** The transferee must enter into a written assumption agreement in a form satisfactory to Company, assuming and agreeing to discharge all of Franchisee's obligations under this Agreement and such ancillary agreements as Company may require. Alternately, and at Company's option, the transferee must sign (and upon Company's request, must cause all interested parties to sign) the standard form franchise agreement then in use for a term ending on the expiration date of this Agreement, and with such renewal term as may be provided by this Agreement, and such ancillary agreements as Company may require, including a Confidentiality and Non-Competition Agreement. The terms of these agreements may differ from the terms

of this Agreement, and will supersede this Agreement in all respects. The transferee will not be required to pay any initial franchise fee.

**25.2.2.5.** The transferee and the proposed Principal Owners and their spouses, as applicable, must guarantee the performance of all obligations under this Agreement in writing, in a form satisfactory to Company.

**25.2.2.6.** The transferee must demonstrate to Company's satisfaction that it meets Company's then-existing financial, educational, managerial and business standards. This includes possessing a good moral character, business reputation and credit rating, having the aptitude and ability to conduct the Franchised Business (as may be evidenced by prior related business experience or otherwise), and having adequate financial resources and capital to operate the business.

**25.2.2.7.** The transferee or Franchisee, at its expense, must upgrade the Restaurant to conform to the then-current standards and specifications of System restaurants, and must complete the upgrading and other requirements within the time specified by Company.

**25.2.2.8.** Franchisee must remain liable for all of the obligations to Company in connection with the Franchised Business prior to the effective date of the transfer, and must sign any and all instruments reasonably requested by Company to evidence such liability.

**25.2.2.9.** At the transferee's expense, the transferee and (at Company's request) transferee's personnel, must satisfactorily complete the training requirements set forth in Section 8, and must complete any training programs then in effect for franchisees upon such terms and conditions as Company may reasonably require.

**25.2.2.10.** Except in the case of a Transfer to a corporation, limited liability company or partnership formed for the convenience of ownership, or Transfers among existing shareholders, Franchisee must pay a transfer fee equal to the lesser of five thousand dollars (\$5,000.00) or Company's actual out-of-pocket costs and expenses associated with reviewing the application to transfer, including, without limitation, legal and accounting fees.

**25.2.2.11.** Franchisee and transferee must agree that any note issued by the transferee to Franchisee in connection with the purchase of the Restaurant will be subordinate to transferee's obligations to pay royalties or any other amounts due Company or its Affiliates;

**25.2.2.12.** Franchisee and transferee must acknowledge in writing that Company's approval of the proposed Transfer does not constitute a representation, guaranty or warranty, express or implied, of the suitability of the terms of the proposed Transfer or the successful operation of any Restaurant; however, Company may withhold consent to a transfer if it believes the terms and conditions of the proposed

transfer would adversely affect the possibility of success of the business in light of the conditions under which it is to be purchased.

**25.2.3.** Franchisee must not grant a security interest in the Franchised Business or in any of its assets unless the secured party agrees that if Franchisee defaults under any documents related to the security interest, Company will have the right to prior notice and the option to be substituted as obligor to the secured party and to cure any default of transferee.

**25.2.4.** Franchisee acknowledges and agrees that each of the foregoing conditions is necessary to assure transferee's full performance of the obligations under this Agreement.

**25.2.5.** Company's consent to a transfer of any interest in Franchisee, this Agreement or the Franchised Business will not constitute a waiver of any claims it may have against the Franchisee or the transferring party, nor will it be deemed a waiver of Company's right to demand exact compliance with any of the terms of this Agreement by the transferee.

## **26. COMPANY'S RIGHT OF FIRST REFUSAL**

**26.1.** Any party holding any direct or indirect interest in Franchisee or in this franchise, and who desires to accept any bona fide offer from a third party to purchase all or part of such interest (hereinafter referred to as "Seller"), must notify Company in writing of each such offer forty-five (45) days before the proposed sale. Seller must provide such information and documentation relating to the proposed purchaser and the offer as Company may require. Company will have the right and option to purchase the Seller's interest at Company's sole discretion, at the price offered by the third party. Company will inform Seller of its intent to exercise the option within thirty (30) days after receipt of all pertinent sales information from Seller. If the proposed transaction includes assets of Franchisee not related to the operation of the Franchised Business, Company may at its discretion exercise its option only with respect to the interest of the Franchised Business. In such event, an equitable purchase price will be allocated to each asset included in the proposed transaction. If Company elects to purchase the Seller's interest, Company may require the purchase to close within thirty (30) days from the date of notice to the Seller of Company's election to purchase.

**26.2.** Any material change in the terms of any offer prior to closing will constitute a new offer, and will be subject to Company's right of first refusal as though it were an initial offer.

**26.3.** Failure of Company to exercise the option afforded by this Section 26 will not constitute a waiver of any other provision of this Agreement relating to proposed transfers, including any of the requirements of this Section 26.

**26.4.** If Company exercises its right of first refusal, the sale agreement must contain customary representations and warranties given by the Seller including, without



limitation, representations and warranties as to ownership, condition of and title to stock and assets, liens and encumbrances relating to the stock and assets, validity of contracts and verification of financial statements.

## **27. DEATH OR DISABILITY OF FRANCHISEE**

**27.1.** Upon the death or permanent disability of a Designated Operating Partner or a certified manager who is an owner of the Franchised Business, the executor, administrator, conservator or other personal representative of such person, or the remaining members, shareholders or partners, must appoint a competent manager within a reasonable time, not to exceed thirty (30) days from the date of death or permanent disability. Such manager must attend and satisfactorily complete Company's initial training program. If the Restaurant is not being managed by a certified manager within thirty (30) days after death or permanent disability, Company is authorized, but is not required, to immediately appoint a manager to maintain the operations of the Restaurant for and on behalf of Franchisee until an approved assignee is able to assume the management and operation of the Restaurant, but not to exceed nine (9) months. Company's appointment of a manager of the Restaurant will not relieve Franchisee of its obligations under this Agreement, and Company will not be liable for any debts, losses, costs or expenses incurred in the operations of the Restaurant or to any creditor of Franchisee for any products, materials, supplies or services purchased by the Restaurant during any period in which it is managed by Company-appointed manager. Company will provide Franchisee with monthly updates regarding the operation of the Restaurant. If, after nine (9) months, a new certified manager is not operating the Restaurant, the Company may terminate this Agreement. Company may charge a reasonable fee for such management services, and may cease to provide such management services at any time.

**27.2.** Upon the death or permanent disability of Franchisee (or managing member, any shareholder or partner of Franchisee, if Franchisee is not an individual), the executor, administrator, conservator or other personal representative of such person must transfer that individual's interest in Franchised Business within a reasonable time, not to exceed twelve (12) months from the date of death or permanent disability, to a person approved by Company. Such transfers, including, without limitation, transfers by devise or will, are subject to all the terms and conditions for assignments and transfers contained in Section 25 of this Agreement. Failure to transfer such interest within the required period of time will constitute grounds for termination of this Agreement.

## **28. STATE AND FEDERAL SECURITIES LAWS/PRIVATE OFFERINGS**

Notwithstanding anything in this Section 28 to the contrary, securities (debt or equity) of Franchisee or an entity owning a direct or indirect equity interest in Franchisee or this Agreement, or any Restaurant or Franchise Agreement, may not be offered pursuant to a private or public offering of securities or any governmentally regulated offering of securities without the prior written consent of Company, which consent may be withheld in Company's sole discretion. Furthermore, neither Franchisee nor any entity owning a direct or indirect equity interest in Franchisee may

merge with any company whose shares are registered under any securities laws unless such company has revenues of at least fifty million dollars (\$50,000,000). Notwithstanding the foregoing, Franchisee may make a private placement of securities if the following requirements are met:

**28.1.** The private placement must comply with all applicable federal, state and local laws governing offerings of securities.

**28.2.** The private placement must comply with each of the relevant transfer procedures, requirements and limitations contained in this Agreement.

**28.3.** The private placement must not result in any change in operating control of Franchisee, the Restaurant, or the individuals controlling the management and policies of Franchisee, and each entity or individual receiving securities in the private placement must be disclosed and be reasonably acceptable to Company.

**28.4.** Any offering memorandum or other information used in connection with any private placement must be submitted to Company for review and comment within a reasonable time prior to its use, and the comments and suggestions of Company thereon must be given due consideration.

**28.5.** Any offering memorandum or other information used in connection with any such private placement must clearly identify that it is not an offering of Company, and that Company has not supplied any financial information, projections, budgets, cost estimates or similar information contained therein, all of which is the sole responsibility of Franchisee.

**28.6.** Each recipient of information relating to such private placement must agree to maintain it in confidence, except to the extent disclosure is required by law, or necessary to comply with securities law requirements.

**28.7.** The structure, timing, allocation and nature of such private placement must be reasonably acceptable to Company.

**28.8.** Franchisee must agree to indemnify Company for any and all costs, expenses, claims, actions, judgments and liabilities (including, but not limited to, costs and expenses related to legal defense) arising from or relating to such private placements.

**28.9.** Franchisee must not become a reporting company by virtue of Sections 12(b), 12(g) or 15(d) of the Securities Exchange Act of 1934, as amended.

**28.10.** Franchisee must agree to reimburse Company for its reasonable expenses in connection with any offering or proposed offering restricted pursuant to this paragraph (including attorneys' fees).

## **29. DEFAULT AND TERMINATION**

**29.1. Immediate Termination.** Franchisee will be deemed to be in default under this Agreement, and all rights granted herein will immediately terminate automatically and without notice to Franchisee if any of the following events occur:

**29.1.1.** Franchisee makes a general assignment for the benefit of creditors.

**29.1.2.** Franchisee commences a voluntary petition under bankruptcy, insolvency or any similar law; or an involuntary case under bankruptcy or insolvency or similar law is filed against Franchisee and is either unopposed by Franchisee or is not dismissed within thirty (30) days of filing; or an order or decree for relief under bankruptcy, insolvency or similar laws is entered regarding Franchisee. Franchisee expressly waives all rights under the provisions of the bankruptcy or other applicable laws and rules, and consents to the immediate termination of this Agreement as provided herein. Franchisee agrees not to seek an order from any court, tribunal or agency in any jurisdiction relating to bankruptcy, insolvency, reorganization or any similar proceedings that would have the effect of staying or enjoining this provision.

**29.1.3.** A bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets or real or personal property is filed by, consented to, or not opposed by Franchisee.

**29.1.4.** Franchisee becomes insolvent in that: (a) Franchisee generally fails, or is generally unable, to pay its obligations as they become due in the regular course of business; or (b) the value of Franchisee's assets are less than the value of its liabilities.

**29.1.5.** If Franchisee is a corporation, partnership or other legal entity and Franchisee is dissolved or its existence otherwise terminated.

**29.1.6.** Execution is levied against the franchise, the Franchised Business or property or the Restaurant premises, and not discharged with five (5) days.

**29.1.7.** A suit to foreclose any lien or mortgage against the Restaurant premises or equipment is instituted and not dismissed or bonded around within thirty (30) days.

**29.1.8.** Franchisee at any time ceases to operate the Franchised Business for a period of five (5) consecutive days, or otherwise abandons the Franchised Business.

**29.2. Termination Upon Notice.** Franchisee will be deemed to be in default, and Company may, at its option, terminate this Agreement and all rights granted under this Agreement upon any of the following grounds. Termination will become effective immediately upon notice to Franchisee.

**29.2.1.** The Company reasonably determines that a threat or danger to public health or safety is likely to result from the construction, maintenance or operation of the Restaurant.

**29.2.2.** Franchisee is convicted of, or pleads no contest to, a felony, a crime involving moral turpitude, or any other crime or offense that Company reasonably believes likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or Company's interest therein.

**29.2.3.** Franchisee discloses, makes any unauthorized duplicates of, or otherwise improperly divulges or uses the contents of the Manual or other confidential information provided to Franchisee by Company contrary to the terms of Sections 23 or 24 of this Agreement.

**29.2.4.** A final judgment remains unsatisfied or of record for thirty (30) days or longer (unless appeal bond has been filed).

**29.2.5.** Franchisee maintains false books or records, or submits any reports or information to Company or any governmental agency or lender that contains any materially inaccurate, incomplete or misleading statements, or omits any fact necessary in order to make the statements made not misleading.

**29.2.6.** Franchisee fails any three (3) evaluations by Company in any consecutive two- (2) year period.

**29.2.7.** Franchisee has made material misrepresentations or omissions in Franchisee's franchise application or this Agreement.

**29.2.8.** Franchisee makes any unauthorized use of the Marks or fails to strictly comply with the terms set forth in Sections 1 or 20 of this Agreement.

**29.2.9.** Franchisee purports to terminate this Agreement without cause.

**29.3. Termination After Opportunity to Cure.** Franchisee will be deemed to be in default, and Company may, at its option, terminate this Agreement and all rights granted under this Agreement upon any of the following grounds. If the condition is susceptible of being cured, Franchisee must correct the condition within the period specified below, or termination will be effective at the conclusion of the cure period.

**29.3.1.** Franchisee fails to maintain and/or operate the Franchised Business in accordance with the standards and specifications, including, but not limited to, selling any product that Franchisee knows or should know does not conform to Company's specifications, failing to sell any product required by Company, or selling any product that is not approved by Company. Franchisee will have five (5) days after receiving written notice to correct such condition.

**29.3.2.** Franchisee fails to construct and open the Franchised Business within the time limits as provided in Sections 6 and 7 of the Agreement. Franchisee will have thirty (30) days after receiving written notice to correct such condition.

**29.3.3.** Franchisee loses the right to possession of the premises, or otherwise forfeits the right to do or transact business in the jurisdiction where the Restaurant is located. Franchisee will have five (5) days after receiving written notice to correct such condition.

**29.3.4.** Franchisee or any partner or shareholder in Franchisee purports to transfer any rights or obligations under this Agreement or any interest in Franchisee to any third party in violation of the terms of Section 25 of this Agreement. Franchisee will have five (5) days after receiving written notice to correct such condition.

**29.3.5.** Franchisee fails to comply with the in-term covenants in Section 31 of this Agreement or fails to obtain execution of the covenants required under that Section. Franchisee will have five (5) days after receiving written notice to correct such condition.

**29.3.6.** Franchisee denies Company's right to inspect, examine or audit the Franchised Restaurant or the Franchisee's books. Franchisee will have five (5) days after receiving written notice to cure such condition.

**29.3.7.** Franchisee fails to submit any financial statement or report when required, or his submission is incorrect or incomplete. Franchisee will have thirty (30) days after receiving written notice to correct such condition.

**29.3.8.** Franchisee fails to pay any federal or state income, sales or other taxes due on the Restaurant's operations, unless Franchisee is in good faith contesting liability for such taxes. Franchisee will have five (5) days after receiving written notice to correct such condition.

**29.3.9.** Franchisee violates any federal labor laws. Franchisee shall have five (5) days after receiving written notice to correct such condition.

**29.3.10.** Franchisee fails to keep the business open and in normal operation for such hours and days as Company may from time to time specify in the Manual or as Company may otherwise specify or approve in writing. Franchisee will have five (5) days after receiving written notice to correct such condition.

**29.3.11.** Franchisee fails to make any payment required under this Agreement. Franchisee will have ten (10) days after receiving written notice to correct such condition.

**29.3.12.** Franchisee fails to commence repair or restoration of the Restaurant after damage or destruction as provided in Section 21, or fails to insure the

Restaurant as provided in Section 22. Franchisee will have thirty (30) days after receiving written notice to correct such condition.

**29.3.13.** Franchisee fails to comply with any provision of this Agreement not specified in this Section 29. Franchisee will have thirty (30) days after receiving written notice to correct such condition.

**29.3.14.** Franchisee or any Affiliate of Franchisee commits a default under any agreement with Company or its Affiliates (other than this Agreement or a Qdoba development agreement) and the default is not cured within the cure period specified in that agreement, if any.

**29.4.** If any applicable law or rule requires greater prior notice of termination, the prior notice required by such law or rule will be substituted for the notice requirements specified above.

**29.5.** If Franchisee and its owners are in compliance with this Agreement and Company fails to comply with this Agreement, Franchisee must provide Company with written notice thereof. If Company fails to comply with a material term of this agreement and either (a) fails to cure such default within thirty (30) days after written notice thereof is delivered to Company or, (b) if the failure cannot be corrected within thirty (30) days, and Company fails to provide proof acceptable to Franchisee of efforts that are reasonably calculated to correct such failure within a reasonable time, which will in no event be more than sixty (60) days after such notice, Franchisee may terminate this Agreement. Such termination will become effective ten (10) days after delivery to Company of notice of termination. A termination of this Agreement by Franchisee for any other reason or without such notice will be deemed a termination by Franchisee without cause.

### **30. OBLIGATIONS UPON TERMINATION OR EXPIRATION**

Upon termination or expiration of this Agreement, all rights granted under this Agreement to Franchisee will immediately terminate, and Franchisee has the following obligations:

**30.1.** Franchisee must immediately cease to operate the Franchised Business and must not thereafter, directly or indirectly, represent itself to the public as a present or former franchisee of Company.

**30.2.** Franchisee must immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with the System, the Proprietary Mark "Qdoba®," and all other Proprietary Marks and distinctive forms, slogans, signs, symbols and devices associated with the System, including but not limited to menu boards, art as specified in the Manual, trade dress, interior image, and packaging. In particular, Franchisee must cease to use, without limitation, all signs, advertising materials, displays, stationery, forms and any other articles which display the Proprietary Marks.

**30.3.** Franchisee must take all necessary action to cancel any assumed name or equivalent registration that contains any service mark or trademark of Company, and Franchisee must furnish Company with evidence satisfactory to Company of compliance with this obligation within five (5) days after termination or expiration of this Agreement.

**30.4.** Franchisee must discharge any and all indebtedness to the Suppliers and other vendors of products or services.

**30.5.** Franchisee must, at Company's option, assign to Company Franchisee's interest in any lease or sublease for the premises of the Franchised Business in accordance with the terms of the Lease. If Company elects to exercise its option to acquire the lease or sublease for the premises of the Franchised Business, Franchisee must take all necessary action to transfer the business' telephone numbers and listings to Company or to cancel the telephone numbers, at Company's option. If Company does not exercise its option to acquire the lease or sublease for the premises of the Franchised Business, Franchisee must immediately upon termination or expiration of this Agreement, make such modifications or alterations to the premises (including, without limitation, the changing of the telephone number) as may be necessary to distinguish the appearance of said premises from that of other restaurants under the System, and Franchisee must make such specific changes to the premises as Company may reasonably request for that purpose. If Franchisee fails or refuses to comply with the requirements of this Section 30, Company and its agents may enter upon the premises without being guilty of trespass or any other tort, to make such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand. Notwithstanding the foregoing, Franchisee agrees not to sell, transfer, assign or sublease the premises to any Mexican-themed fast-food, Mexican fast-casual or wrap-style restaurant where customers place orders at the counter rather than via a waiter or waitress at the dining table, or any business that derives more than thirty percent (30%) of its sales from wraps or burrito products.

**30.6.** If Franchisee continues to operate, or subsequently begins to operate, any other business, it must not use any reproduction, counterfeit, copy or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, that is likely to cause confusion, mistake or deception, or that is likely to dilute Company's rights in and to the Proprietary Marks. Franchisee further agrees not to use any designation of origin or description or representation that falsely suggests or represents an association or connection with Company.

**30.7.** Franchisee must promptly pay all sums owing to Company and its Affiliates. In the event of termination for any default of Franchisee, such sums will include all damages, costs and expenses, including reasonable attorneys' fees, incurred by Company as a result of the default. That obligation will give rise to a lien in favor of Company against any and all of the personal property, furnishings, equipment, signs, fixtures and inventory owned by Franchisee and on the Restaurant premises at the time of default, and will remain a lien until the obligation is paid in full.

**30.8.** Franchisee must pay to Company all damages, costs and expenses, including reasonable attorneys' fees, incurred by Company after the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this Agreement.

**30.9.** Franchisee must immediately deliver to Company all manuals, including the Manual, and all other records and documents containing confidential information.

**30.10.** Company has the option, to be exercised within thirty (30) days after termination, to purchase from Franchisee any or all of the furnishings, equipment, signs, fixtures, supplies or inventory relating to the operation of the Franchised Business, at their fair market value. "Fair market value" will be determined by taking into account the termination or expiration of the franchise granted under this Agreement and will not include any factor or increment for any trademarks, service marks or other commercial symbols used in connection with the operation of the Restaurant or any goodwill or "going concern" value for the Restaurant. If the parties cannot agree on a fair market value within a reasonable time, the parties will designate an independent appraiser whose determination will be binding. If Company elects to exercise the option provided in this Section 30, it may set off all amounts due from Franchisee, and the cost of the appraisal, if any, against any payment to be made by Company.

**30.11.** All obligations of Company, Franchisee and Principal Owners that expressly or by their nature survive or are intended to survive the expiration, termination or assignment of this Agreement, including but not limited to provisions in Sections 18, 25 and 31, will continue in full force and effect after and notwithstanding its expiration or termination or assignment, until those obligations are satisfied in full or by their nature expire.

**30.12.** Franchisee must comply with the covenants contained in Section 31 of this Agreement.

## **31. COVENANTS AND RESTRICTIONS ON OTHER BUSINESS INTERESTS**

**31.1.** During the term of this Agreement, except as otherwise approved in writing by Company, Franchisee must devote best efforts to the management and operation of the Franchised Business.

**31.2.** Franchisee acknowledges that, pursuant to this Agreement, Franchisee will receive valuable specialized training and confidential information, including without limitation, information regarding the development, operational, sales, promotional and marketing methods and techniques of Company and the System. During the term of this Agreement, except as otherwise approved in writing by Company, Franchisee may not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership or corporation:

**31.2.1.** Divert or attempt to divert any business or customer of the business franchised under this Agreement to any competitor, by direct or indirect



inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Company's Proprietary Marks and the System.

**31.2.2.** Employ or seek to employ any person who Franchisee knew, or should have known, is at that time employed by Company or by any other franchisee or developer of Company, unless: (i) such employee has been separated from their prior employment for a period of at least six (6) months; or (ii) Franchisee has the consent of the prior employer. Company covenants not to employ or seek to employ any person who Company knew, or should have known, is at that time employed by the Franchisee, unless: (i) such employee has been separated from their prior employment for a period of at least six (6) months; or (ii) Company has the consent of Franchisee. This provision creates no legal rights in any third party. Any violation of this section will result in the payment of six months' salary and benefit of such employee to the prior employer. Such payment is a penalty, and not damages, and is meant to approximate the actual losses suffered by the prior employer.

**31.3.** During the term of this Agreement, Franchisee may not either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership or corporation, own, maintain, operate, engage in, or have any interest in any Mexican-themed fast-food, Mexican fast-casual or wrap-style restaurant, where customers place orders at the counter rather than via a waiter or waitress at the dining table, or any restaurant deriving more than thirty percent (30%) of its gross revenues from the combined sale of burritos or wraps, which business is, or is intended to be, located within the United States.

**31.4.** For a continuous period of two (2) years after the expiration or termination of this Agreement, regardless of the cause for the termination, Franchisee may not either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership or corporation, own, maintain, operate, engage in, or have any interest in any Mexican-themed fast-food, Mexican fast-casual or wrap-style restaurant, where customers place orders at the counter rather than via a waiter or waitress at the dining table, or any restaurant deriving more than thirty percent (30%) of its gross revenues from the combined sale of burritos or wraps, which business is, or is intended to be, located within five (5) miles of any Qdoba® restaurant existing at the time of the termination or expiration.

**31.5.** Subsections 31.3 and 31.4 above do not apply to ownership by Franchisee of less than one percent (1%) beneficial interest in the outstanding equity securities of any publicly held corporation.

**31.6.** The parties agree that each of the foregoing covenants is independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 31 is found unreasonable or unenforceable by a court or agency having valid jurisdiction, Franchisee expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted

by law, as if the resulting covenant were separately stated in and made a part of this Section 31.

**31.7.** Company has the right, in its sole discretion, to reduce the scope of any covenant set forth in this Agreement, or any portion thereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof. Franchisee agrees that it will comply forthwith with any covenant as so modified, and that the covenant will be fully enforceable, notwithstanding the provisions of Subsection 33.4 of this Agreement.

**31.8.** Franchisee expressly agrees that the existence of any claims it may have against Company, whether or not arising from this Agreement, will not constitute a defense to Company's enforcement of the covenants in this Section 31.

**31.9.** Franchisee acknowledges and agrees that Franchisee's violation of the terms of this Section 31 would result in irreparable injury to Company for which no adequate remedy at law may be available. Franchisee acknowledges and agrees that Company may obtain an injunction prohibiting any conduct by Franchisee in violation of the terms of this Section 31.

**31.10.** At Company's request, Franchisee must require and obtain covenants similar to those set forth in this Section 31 (including covenants applicable upon the termination of a person's relationship with Franchisee) from any or all of the following persons: (1) all managers of Franchisee and any other personnel employed by Franchisee who have received or will receive training from Company; (2) all officers, directors, and holders of a beneficial interest of five percent (5%) or more of the securities of Franchisee, and of any corporation directly or indirectly controlling Franchisee, if Franchisee is a corporation; and (3) the general partners and any limited partners (including any corporation, and the officers, directors and holders of a beneficial interest of five percent (5%) or more of the securities of any corporation which controls, directly or indirectly any general or limited partner), if Franchisee is a partnership. Every covenant required by this Section 31 must be in a form satisfactory to Company, and must specifically identify Company as a third-party beneficiary of such covenants with the independent right to enforce them. The current form of agreement is attached as Exhibit E.

**31.11.** Franchisee covenants that during the term of this Agreement, Franchisee will not permit the ratio of total indebtedness of the business of the Restaurant (and any other debt which the holder of which may have recourse against the business) to the total equity in the business of the Restaurant to exceed 4 to 1, all calculated in accordance with generally accepted accounting principles.

## **32. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

**32.1.** It is understood and agreed by the parties that this Agreement does not create a fiduciary relationship between them, and that Company and Franchisee are independent contractors. Other than as set forth in Section 19, nothing in this

Agreement is intended to make either party an agent, legal representative, subsidiary, joint venturer, partner, employee or servant of the other for any purpose whatsoever.

**32.2.** During the term of this Agreement, Franchisee must hold itself out to the public as an independent contractor operating the business pursuant to a franchise from Company. Franchisee agrees to take such actions as may be necessary to do so, including, but not limited to, exhibiting a notice of that fact in a conspicuous place in the franchised premises, the content of which Company reserves the right to specify.

**32.3.** Nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty or representation on Company's behalf, or to incur any debt or other obligation in Company's name. Company will not assume liability for, or be deemed liable as a result of, any such action; nor will Company be liable by reason of any act or omission of Franchisee in its conduct of the Franchised Business or for any claim or judgment arising therefrom.

**32.4.** Franchisee is responsible for all losses, damages, and liabilities, whether contractual, statutory or otherwise, to third persons arising out of or in connection with the development, construction, possession, ownership or operation of the Franchised Business, and for all claims or demands for damages to property, or for injury, illness or death of persons directly or indirectly resulting therefrom. Franchisee must defend, indemnify and hold harmless Company and its Affiliates and their agents from all such claims, demands, losses, obligations, costs, attorneys' fees, expenses, liabilities, debts or damages directly or indirectly resulting therefrom, unless resulting from the gross negligence or willful misconduct of Company. If such claims are asserted against Company or its Affiliates or their agents, Company will notify Franchisee, and Franchisee will assume the defense of such claims. If Franchisee fails to assume the defense, then Company may defend in such manner as it deems appropriate. Franchisee must reimburse Company for all costs, including attorneys' fees, and the reasonable value of time spent by corporate counsel, incurred by Company or its Affiliates in effecting such defense, in addition to any sum that Company or its Affiliates may incur by reason of any settlement or judgment. Company's right to defense and indemnification hereunder will exist, notwithstanding that its joint or concurrent liability may be imposed on Company by law.

### **33. MISCELLANEOUS PROVISIONS**

#### **33.1. APPROVALS AND WAIVERS**

**33.1.1.** Whenever this Agreement requires the prior approval or consent of Company, Franchisee must make a timely written request to Company for such approval or consent. All such approvals or consents must be obtained in writing.

**33.1.2.** Company makes no warranties or guarantees upon which Franchisee may rely in connection with this Agreement.

**33.1.3.** No delay, omission or forbearance on the part of Company to exercise any right, option, duty or power constitutes a waiver by Company to enforce any such right, option, duty or power as against Franchisee; nor does any such delay, omission, or forbearance constitute a waiver of any subsequent breach or default by Franchisee. Company's acceptance of any payments due to it under this Agreement will not be deemed to be a waiver by Company of any preceding breach by Franchisee of any terms, provisions, covenants or conditions of this Agreement.

### **33.2 FORCE MAJEURE**

**33.2.1.** Neither Company nor Franchisee will be deemed to be in breach of this Agreement, or be liable for loss or damage if it fails to perform its obligations due to: (1) compliance with any law, ruling, order, regulation, requirement, or instruction of any federal, state, or municipal government or any department or agency thereof; (2) acts of God; (3) acts or omissions of the other party; (4) fires, strikes, embargoes, war, terrorism or riot; or (5) any other similar event or cause which are force majeure in nature. Any delay resulting from any of said causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

### **33.3. APPLICATION OF PAYMENTS**

Notwithstanding any designation by the Franchisee, Company may in its discretion apply any payments made by Franchisee to any of Franchisee's past indebtedness relating to royalties, the advertising fund, purchases, loans, interest or any other indebtedness to Company.

### **33.4. NOTICES**

Any and all notices required or permitted under this Agreement must be made in writing, and must be personally delivered or mailed by certified or registered mail, return receipt requested, to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Company: Qdoba Restaurant Corporation  
4865 Ward Road, Suite 500  
Wheat Ridge, CO 80033-1902  
Attention: Gary J. Beisler, President and  
Chief Executive Officer

With a copy to: Jack in the Box Inc.  
9330 Balboa Avenue  
San Diego, CA 92123  
Attention: Stephen M. Brigandi, Esq.  
Corporate Counsel

Notices to Franchisee: Brooks Hospitality, LLC  
408 Mill Street  
Coraopolis, PA 15108  
Attention: Chad Brooks,  
Managing Member

Any notice by certified or registered mail will be deemed to have been given at the earlier of the (i) date and time of receipt, or (ii) the fifth business day after being deposited in the U.S. Mail.

### **33.5. ENTIRE AGREEMENT**

The Recitals and Exhibits referenced in this Agreement are hereby incorporated into and made part of this Agreement. This Agreement constitutes the entire, full and complete agreement between Company and Franchisee concerning the franchise identified on Exhibit A, and supersedes any prior negotiations, understandings, representations or agreements relating to that Franchise; however, nothing in this Agreement is intended to disclaim the representations we made in the franchise disclosure document we furnished to you. Additionally, if this Agreement is entered into pursuant to a Development Agreement, and if the terms of this Agreement conflict with the terms of that Development Agreement, such Development Agreement will be controlling.

### **33.6. MODIFICATION**

No amendment, change or variance from this Agreement will be binding on either party unless mutually agreed to by the parties, and signed by their authorized officers or agents in writing.

### **33.7. SEVERABILITY AND CONSTRUCTION**

**33.7.1.** Except as expressly provided to the contrary in this Agreement, each portion, section, part, term and/or provision of this Agreement is severable. If, for any reason a court or agency having valid jurisdiction, determines any section, part, term or provision of this Agreement is invalid and contrary to, or in conflict with, any existing or future law or regulation, that decision will not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms or provisions of this Agreement that remain intelligible. The latter will continue to be given full force and effect and bind the parties, and the invalid portions, sections, parts, terms or provisions will be deemed not to be a part of this Agreement.

**33.7.2.** Except as expressly provided to the contrary in this Agreement, nothing in this Agreement is intended, nor will be deemed, to confer upon any person or legal entity other than Franchisee, Company, Company's officers, directors and employees, and such successors and assigns as may be contemplated by this Agreement any rights or remedies under or by reason of this Agreement.

**33.7.3.** All captions in this Agreement are intended solely for the convenience of the parties, and none will be deemed to affect the meaning or construction of any provision hereof.

**33.7.4.** All references herein to the masculine, neuter or singular will be construed to include the masculine, feminine, neuter or plural, where applicable; and all acknowledgments, promises, covenants, agreements and obligations herein made or undertaken by Franchisee will be deemed jointly and severally undertaken by all those executing this Agreement on behalf of Franchisee.

### **33.8. NON-BINDING MEDIATION**

**33.8.1.** Except as provided in Subsection 33.8.5 below, controversies, disputes and claims between Company, its Affiliates, and their shareholders, officers, directors, employees and agents, or any of them, on the one hand, and Franchisee, its Affiliates, partners, trustees, shareholders, officers, directors and agents, or any of them, on the other hand, arising out of or related to this Agreement, the Restaurant or the Franchised Business, are subject to non-binding mediation pursuant to the terms of this Section 33. Except as specified in Subsection 33.8.5, no litigation may be commenced between such parties prior to the mediation termination date, as defined in Subsection 33.8.4 below, on any claim which is subject to non-binding mediation under this Agreement, whether or not the mediation has been commenced. The commencement or pendency of litigation will not stay non-binding mediation required under this Agreement, and non-binding mediation required under this Agreement will not stay any litigation commenced in conformity with Subsection 33.8.5. Mediation under this Section 33 is not intended to alter or suspend the rights or obligations of the parties under this Agreement or to determine the validity or effect of any provision of this Agreement, but is intended to provide the parties with an opportunity to amicably and expeditiously resolve disputes in a cost-effective manner on mutually acceptable terms and conditions.

**33.8.2.** The non-binding mediation provided for in this Agreement must be commenced by the party demanding mediation (the "complainant") by giving written notice of the demand for mediation (the "demand") to the party with whom mediation is sought (the "respondent"). The demand must specify with reasonable particularity the matter or matters on which non-binding mediation is being sought. A copy of the demand must be given by the complainant simultaneously to Company, if Company is not a complainant or a respondent.

**33.8.3.** Non-binding mediation under this Agreement will be conducted in Denver, Colorado, by a mediator or mediation program designated by Company in writing (the "designation"), or by such mediator as complainant and respondent may otherwise agree to. Company will send the designation to complainant and respondent within a reasonable time after its receipt of the demand.

**33.8.4.** Non-binding mediation under this Agreement must be concluded within sixty days of the giving of the demand or such longer period as may be

mutually agreed to in writing by the parties to the mediation (the "mediation termination date"). All aspects of the mediation process will be treated as confidential, must not be disclosed to others, and will not be offered or admissible in any other proceeding or legal action whatsoever. Complainant and respondent will each bear its own costs of mediation, and each will bear one-half the cost of the mediator and mediation service.

**33.8.5.** If Franchisee is more than forty-five (45) days past due in any of its payments to Company, whether under this Agreement or any other Agreement or account with Company, then Company will not be required to seek or to participate in mediation of any matter or dispute under this Section 33 (although Company reserves the right to require mediation), and Company will be free to commence or to pursue litigation at any time. Company will not be required to seek or to participate in mediation of any matter or dispute relating to the indemnification or insurance provisions of this Agreement (although Company reserves the right to require mediation). Nothing in this Section 33 will prevent any party from instituting or pursuing litigation at any time to preserve the status quo, protect the Proprietary Marks, protect the health or safety of the public, or avoid irreparable harm.

### **33.9. LIMITATIONS ON ACTIONS**

**33.9.1.** This Agreement takes effect upon its acceptance and execution by Company, and will be interpreted and construed under the laws of the State of Colorado, which laws will prevail in the event of any conflict of law.

**33.9.2.** Any action brought by either party against the other in any court, whether federal or state, must be brought in Denver, Colorado. For the purpose of carrying out this provision, the parties hereby waive all questions of personal jurisdiction or venue.

**33.9.3.** No right or remedy conferred upon or reserved to Company or Franchisee by this Agreement is intended to be, nor will be deemed, exclusive of any other right or remedy provided or permitted herein or by law or equity, but each is cumulative of every other right or remedy.

**33.9.4.** Nothing contained in this Agreement restricts Company's right to obtain injunctive relief under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

**33.9.5.** Company and Franchisee irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by Company against Franchisee, or by Franchisee against Company and/or its Affiliates, or their shareholders, officers, directors, employees or agents, whether or not there are other parties in such action.

**33.9.6.** Any and all claims and actions arising out of, or relating to, this Agreement, the relationship of Company and Franchisee, or Franchisee's operation of the Restaurant, must be commenced within two (2) years from the date Franchisee

knew or should have known of the facts giving rise to such claim or action, or such shorter terms as is established by law, or such claim or action will be barred.

**33.9.7.** Company and Franchisee hereby waive to the fullest extent permitted by law any right to, or claim of, any punitive or exemplary damages against the other, and agree that in the event of a dispute between them, recoverable damages will be limited to the actual damages sustained by it.

### **33.10. ATTORNEYS' FEES**

In any litigation arising out of or relating to this Agreement, the prevailing party will be entitled to receive from other party all costs, including reasonable accounting and attorneys' fees incurred as a result of the legal action.

### **34. ACKNOWLEDGMENTS**

**34.1.** Franchisee acknowledges that it has conducted an independent investigation of the business franchised under this Agreement, and recognizes that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability of Franchisee as an independent businessperson.

**34.2.** Franchisee acknowledges that it received a copy of the complete Qdoba® Disclosure Document, and the attachment(s) thereto, and on or before the date of the first personal meeting with Company to discuss the franchise and at least fourteen (14) calendar days before the date the Franchisee made any payment to Company and the date on which this Agreement was signed.

**34.3.** Franchisee acknowledges that it has read and understood this Agreement, the attachment(s) hereto and agreements relating hereto, if any, and that Franchisee has had ample time and opportunity to consult with advisors of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement.

**34.4.** Franchisee understands and accepts the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain Company's high standards of quality and service, and the uniformity of those standards, at all Qdoba® restaurants and thereby to protect and preserve the goodwill of the Proprietary Marks and System.

**34.5.** Franchisee acknowledges that he has not received or relied upon, any representation, guaranty, or warranty express or implied, as to the sales volume, income, earnings, expenses, revenues, profits or success of Qdoba® restaurants or the business venture contemplated by this Agreement, except as stated in Company's Disclosure Document, or the extent to which Company will continue to develop and expand the network of Qdoba® restaurants. Franchisee further acknowledges that he has not received or relied upon any representations about the franchise, Company or its franchising program or policies from Company or its officers, directors, employees or



agents that are contrary to the statements made in Company's Disclosure Document or to the terms in this Agreement. Any information acquired by Franchisee from other Qdoba® restaurant franchisees relating to the sales, income, earnings, expenses, revenues, profits or success of any such franchised Qdoba® restaurants does not constitute information obtained from Company, nor does Company make any representation as to the accuracy of any such information.

**34.6.** Franchisee acknowledges and agrees that Company's officers, directors, employees and agents act only in a representative, and not in a personal, capacity in connection with any of their dealings with Franchisee.

**34.7.** Franchisee represents to Company, as an inducement to enter into this Agreement, that all statements in Franchisee's application for the franchise are accurate and complete, and Franchisee has made no misrepresentations or material omissions in obtaining the franchise.

**34.8.** This Franchise Agreement may be signed in one or more counterparts, all of which when taken together constitute one original document.

**IN WITNESS WHEREOF,** the parties hereto have duly signed, sealed and delivered this Agreement on the day and year first above written.

WITNESS:

Gail M. Hill

QDOBA RESTAURANT CORPORATION

By: Todd L. Owen

Todd L. Owen, Vice President,  
Franchise Development

WITNESS:

Chad Brooks

BROOKS HOSPITALITY, LLC

By: Chad Brooks

Chad Brooks, Managing Member

**Exhibit A**


**ACCEPTED LOCATION**

The following is agreed upon as the Accepted Location in connection with this renewed Franchise Agreement dated OCTOBER 17, 2012.

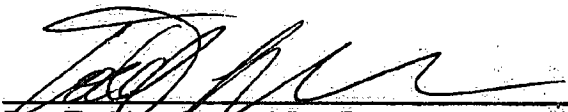
Site #: 2108  
3712 Forbes Avenue  
Pittsburg, Pennsylvania 15213

The Protected Territory is the area within a two (2) mile radius of the Accepted Location.

BROOKS HOSPITALITY, LLC

  
By: Chad Brooks, Managing Member

QDOBA RESTAURANT CORPORATION

  
By: Todd L. Owen, Vice President,  
Franchise Development

**Exhibit B**

**CURRENTLY AUTHORIZED  
TRADEMARKS**

1. "QDOBA"  
Reg. No. 2,462,773  
Reg. Date: June 19, 2001
2. "QDOBA MEXICAN GRILL"  
Reg. No. 2,452,146  
Reg. Date: May 15, 2001
3. "QDOBA MEXICAN GRILL" and Design  
Reg. No. 2,464,633  
Reg. Date: June 26, 2001
4. "QDOBA MEXICAN GRILL" and Design  
Reg. No. 2,574,316  
Reg. Date: May 28, 2002
5. Cactus Button Design  
Reg. No. 2,876,701  
Reg. Date: August 24, 2004
6. Cactus Design  
Reg. No. 2,499,125  
Reg. Date: October 16, 2001
7. "NAKED BURRITO"  
Reg. No. 2,831,477  
Reg. Date: April 13, 2004
8. "Qdoba Rewards"  
Common Law Trademark
9. "More to Explore"  
Common Law Trademark

Qdoba Restaurant Corporation has common law rights in the foregoing marks as a result of its use of the marks.

In addition, the following unregistered names and logos are approved for use by Franchisees:

1. Poblano Pesto Burrito
2. Ancho Chile BBQ Burrito
3. Grilled Vegetable Burrito
4. Fajita Ranchera Burrito
5. Seasoned Shredded Beef Burrito
6. Queso Burrito
7. Chicken Burrito
8. Steak Burrito
9. Fajita Classica Burrito
10. Ground Sirloin Burrito
11. Vegetarian Burrito
12. 3-Cheese Nachos
13. Tortilla Soup
14. Cheese Quesadilla
15. Chicken Quesadilla
16. Steak Quesadilla
17. Poblano Pesto
18. Warm 3-Cheese Queso
19. Pico de Gallo Salsa
20. Roasted Chile Corn Salsa
21. Salsa Roja
22. Fiery Habanero Salsa
23. Salsa Verde
24. Naked Taco Salad™
25. Mexican Gumbo

Exhibit C

GUARANTY AND ASSUMPTION OF  
FRANCHISE OWNER'S OBLIGATIONS

THIS GUARANTY AND ASSUMPTION OF FRANCHISE OWNER'S OBLIGATIONS ("Guaranty") is given this 17<sup>TH</sup> day of OCTOBER, 2012, by the undersigned.

FRANCHISEE: BROOKS HOSPITALITY, LLC

Date of Franchise Agreement: OCTOBER 17, 2012

In consideration of, and as an inducement to, the execution of the above-mentioned Qdoba® Franchise Agreement (the "Agreement") by Qdoba® Restaurant Corporation ("Company"), each of the undersigned and any other parties who sign counterparts of this guaranty (referred to herein individually as a "Guarantor" and collectively as "Guarantors") hereby personally and unconditionally: (a) guarantees to COMPANY, and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement, both monetary obligations and other obligations, including without limitation, the obligation to pay costs and legal fees as provided in the Agreement and the obligation to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including without limitation the provisions of the Agreement relating to competitive activities.

Each Guarantor waives:

1. acceptance and notice of acceptance by Company of the foregoing undertakings; and
2. notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; and
3. protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; and
4. any right he may have to require that an action be brought against Franchisee or any other person as a condition of liability; and

5. all rights to payments and claims for reimbursement or subrogation which he may have against Franchisee arising as a result of his execution of and performance under this guaranty by the undersigned (including by way of counterparts); and

6. any and all other notices and legal or equitable defenses to which he may be entitled.

Each Guarantor consents and agrees that:

(A) his direct and immediate liability under this guaranty shall be joint and several not only with Franchisee, but also among the Guarantors; and

(B) he shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; and

(C) such liability shall not be contingent or conditioned upon pursuit by COMPANY of any remedies against Franchisee or any other person; and

(D) such liability shall not be diminished, relieved or otherwise affected by any subsequent rider or amendment to the Agreement or by any extension of time, credit or other indulgence which Company may from time to time grant to Franchisee or to any other person, including, without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable throughout the term of the Agreement and for so long thereafter as there are any monies or obligations owing by Franchisee to Company under the Agreement; and

(E) the written acknowledgment of Franchisee, accepted in writing by Company, or the judgment of any court or arbitration panel of competent jurisdiction establishing the amount due from Franchisee shall be conclusive and binding on the undersigned as guarantors.

If Company is required to enforce this Guaranty in a judicial or arbitration proceeding, and prevails in such proceeding, it shall be entitled to reimbursement of its costs and expenses, including, but not limited to, reasonable accountants', attorneys', attorneys' assistants', arbitrators' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for or in contemplated of the filing of any such proceeding.



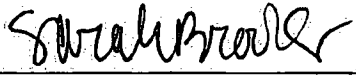
If Company is required to engage legal counsel in connection with any failure by the undersigned to comply with this Guaranty, the Guarantors shall reimburse Company for any of the above-listed costs and expenses incurred by it.

This Guaranty may be signed in one or more counterparts, all of which when

taken together constitute one original document.

**IN WITNESS WHEREOF**, each Guarantor has hereunto affixed his signature on the same day and year as the Agreement was signed.

**GUARANTOR(S)**

  Spouse:   
Chad Brooks Sarah Brooks

**Exhibit D**

**AUTHORIZATION FOR PREARRANGED PAYMENTS  
(DIRECT DEBITS)**

**(Already on File)**



**Exhibit E**

**CONFIDENTIALITY AND NON-COMPETITION AGREEMENT  
(For Shareholders, Partners, Members)**

**(Already on File)**

Writer's Direct Phone: (858) 571-2564  
Fax: (858) 571-2101  
Email Address: [Ryan.Evans@jackinthebox.com](mailto:Ryan.Evans@jackinthebox.com)

Sent via Certified Mail, Return Receipt  
and via E-Mail  
Hand Delivered on 2/27/18

February 27, 2018

Brooks Hospitality, LLC  
c/o Mr. Chad Brooks  
408 Mill Street  
Coraopolis, PA 15108

RE: NOTICE OF DEFAULT AND TERMINATION  
Site #2108, 3712 Forbes Avenue, Pittsburgh, PA 15213 ("the Restaurant")

Dear Mr. Brooks:



**QDOBA**  
MEXICAN EATS

In its letter dated February 16, 2018 ("the Letter"), QRC informed you that if Brooks Hospitality, LLC ("Brooks") failed to remedy the imminent health and safety hazard that was present in the Restaurant, QRC would exercise its termination rights under the terms of the Franchise Agreement dated October 17, 2012 (the "Franchise Agreement"). Specifically, QRC outlined items that must be fixed in order for Brooks to continue operating the Restaurant, and gave you deadlines by which to fix them.

On February 23, 2018, Franchise Business Consultant, John Clafin, and Field Service Facilities Manager, Rich Bunt, re-inspected the Restaurant to make sure Brooks complied with the repair requests for the items set forth in the Letter. During the course of that inspection, they found evidence of a continued pest infestation, including rodent droppings near the men's restroom, around the trash enclosure in the upstairs dining area, and in the bar area. They also noted that several access points from which rodents can enter the Restaurant remained unsealed or open. These issues were specifically called out as needing immediate repair, and Brooks had ample time to fix them.

The issues in the Restaurant pose a significant threat to QRC's guests and its Brand. As a result, QRC is exercising its right to terminate the Franchise Agreement, effective today at 3:00 p.m. Pacific Time.

858.571.2121 • JACKINTHEBOX.COM • QDOBA.COM

9330 BALBOA AVENUE, SAN DIEGO, CA 92123

### Grounds for Default and Termination

The Letter listed thirteen items in an Action Plan that Brooks needed to complete by certain dates to ensure the safety and health of QRC's guests. Upon information and belief, there are several items in the Action Plan that you have not yet completed by the required deadline, as follows:

#### By February 19, 2018:

1. All evidence of a pest infestation must be eliminated from all surfaces throughout the facility and all contaminated surfaces must be washed, rinsed, and sanitized. This must continue on a routine basis;
2. Shelving must be cleaned to eliminate food, grease, debris and standing water;

#### By February 23, 2018:

3. Replace all steel wool that is currently filling gaps between pipes and the walls with permanent wall repairs;
4. Permanently remove any old, unused equipment in the bar area;
5. Repair, seal, caulk, and grout the walls around the perimeter of the 1st and 2nd floor dining areas to eliminate pest entry;

QRC has a right to close the Restaurant and terminate the Franchise Agreement for potential health or safety issues (described in Section 29.2.1 of the Franchise Agreement) and for repeated failures of evaluations of the Restaurant by QRC (described in Section 29.2.6 of the Franchise Agreement). Because Brooks has failed to address the pest infestation and resulting danger to public health and food safety at the Restaurant, you are in default of the Franchise Agreement and QRC has exercised its right to terminate the Franchise Agreement.

I remind you of the post-termination obligations described in Section 30 of the Franchise Agreement, including the obligation to pay all fees and charges under the Franchise Agreement up to the termination date and fulfill any obligations of the Franchise Agreement that naturally survive the termination. For further instructions regarding the closure process, you should contact Cindy Person at (858) 571-2188. If you fail to cease the use of Qdoba systems upon termination of the Franchise Agreements, such actions will be considered a violation of QRC's proprietary marks and other legal rights.

Nothing in this letter should be deemed a waiver of any legal rights of QRC under the Franchise Agreements or otherwise. QRC is reserving all rights it may have

under law and equity. No provision of this Notice of Default and Termination may be waived or modified except by a written instrument signed by an officer of QRC.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Evans", with a long horizontal flourish extending to the right.

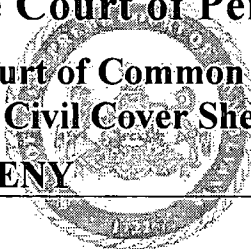
Ryan Evans  
Corporate Counsel

cc: Keith Guilbault  
Christine Willis  
John Clafin  
Ryan Cooney ([rcooney@lampplaw.com](mailto:rcooney@lampplaw.com))  
Robert Lampl ([RLampl@lampplaw.com](mailto:RLampl@lampplaw.com))

# Supreme Court of Pennsylvania

## Court of Common Pleas Civil Cover Sheet

ALLEGHENY County



<i>For Prothonotary Use Only:</i>	TIME STAMP
Docket No:	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

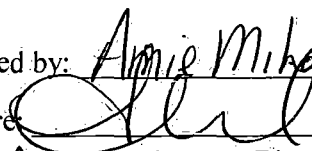
SECTION A	<b>Commencement of Action:</b>	
	<input checked="" type="checkbox"/> Complaint	<input type="checkbox"/> Writ of Summons
	<input type="checkbox"/> Transfer from Another Jurisdiction	<input type="checkbox"/> Petition
	<input type="checkbox"/> Declaration of Taking	
Lead Plaintiff's Name: Qdoba Restaurant Corporation		Lead Defendant's Name: Brooks Hospitality LLC
Are money damages requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Dollar Amount Requested: <input type="checkbox"/> within arbitration limits (check one) <input type="checkbox"/> outside arbitration limits
Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: <u>GORDON REES SCULLY MANSUKHANI</u>		
<input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)		

SECTION B	<b>Nature of the Case:</b> Place an "X" to the left of the <u>ONE</u> case category that most accurately describes your <b>PRIMARY CASE</b> . If you are making more than one type of claim, check the one that you consider most important.		
	<b>TORT</b> (do not include Mass Tort) <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____	<b>CONTRACT</b> (do not include Judgments) <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input checked="" type="checkbox"/> Other: Breach of Franchise Agreement	<b>CIVIL APPEALS</b> Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____
	<b>MASS TORT</b> <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	<b>REAL PROPERTY</b> <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	<b>MISCELLANEOUS</b> <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: _____
	<b>PROFESSIONAL LIABILITY</b> <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____		

Updated 1/1/2011

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Amie Mihalko / Plaintiff  
Signature:   
Name: Amie Mihalko  
Attorney No. (if applicable): 209137